REQUIREMENTS OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 4696

TO AMEND THE REQUIREMENTS OF THE MANUFACTURING CLAUSE OF TITLE 17 OF THE UNITED STATES CODE, THE COPYRIGHT LAW

JUNE 26, 1986

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REQUIREMENTS OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

TUESDAY, JUNE 26, 1986

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m., in room B-318, Rayburn House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. This is a meeting of the Subcommittee on Trade of the Committee on Ways and Means. This morning we will receive testimony on H.R. 4696, a bill to extend the application of the manufacturing clause of the copyright law.

The manufacturing clause requires that certain publications be printed in the United States in order to receive copyright protection. It has existed in one form or another since 1891. Under current law the manufacturing clause expires on July 1, 1986, or just a few days down the road. After that date, copyright protection will no longer be denied to publications printed outside the United States and Canada.

H.R. 4696 would extend the manufacturing clause indefinitely, with certain modifications. This issue is extremely controversial in view of the fact that the manufacturing clause has been found to violate the General Agreement on Tariffs and Trade.

The purpose of this hearing will be to elicit views from the administration and interested parties regarding the economic and trade policy implications of retaining the manufacturing clause in its proposed amended form.

We will first hear from a panel of distinguished administration witnesses, Ambassador Yeutter, the U.S. Trade Representative, and Secretary of Commerce Baldrige. I have been informed that Secretary Baldrige has been detained and will arrive in a few minutes, so Ambassador Yeutter, we will be glad to hear from you first.

STATEMENT OF AMBASSADOR CLAYTON YEUTTER, U.S. TRADE REPRESENTATIVE

[The prepared statement begins at p. 70.]

Ambassador YEUTTER. Thank you, Mr. Chairman. It's nice to be back before the subcommittee again. This is a piece of legislation that I hope the subcommittee will discard as quickly and decisively as it can. This is the fourth time I believe in the last couple of months that I have testified on this piece of legislation here on

Capitol Hill, and I am not anymore pleased with the legislation today than I was the first time that I testified. It certainly is no more appealing today than it ever has been in the past.

As you indicated, Mr. Chairman, this is a piece of legislation that has been around for a long time, 95 years in fact. It was born as a result of the efforts of the printing industry to get off the ground back before the turn of the century as an infant industry, and it may well have been that temporary protection for that industry was appropriate in 1895 or thereabouts, but to suggest that this is still an infant industry in 1986, 95 years later, seems to me to be patently ludicrous.

We cannot argue effectively in the GATT against prosecution of infant industry arguments by the lesser developed nations of the world, if we do the same thing here in the United States.

As you know very well, Mr. Chairman, one of our concerns in administration of the GATT has been that a lot of the lesser developed countries put restrictions on products coming in from the United States based on arguments that they must protect their infant industries, and then they retain those restrictions years after the industries have lost their infancy status, and they just shrug their shoulders when we ask them to correct that.

It is very difficult for me or any other representative of the U.S. Government to argue against that practice, when we do precisely the same thing, and all they have to do to counter those arguments when we complain against barriers to our exports is to say: Look at your manufacturing clause. You have been protecting that industry for 95 years.

That is one of my concerns.

The second one would simply be that if this were an uncompetitive industry, I could at least see some rationale for the legislation, perhaps not very persuasive rationale, but at least there would be some rationale if this were an industry that really needed help from the U.S. Government or from the consumers of the work products of the printing industry. But it happens to be a very efficient and productive industry. That is commendable, and it is an industry that can stand on its own two feet very well, and doesn't need this kind of legislation to sustain it.

Beyond that, Mr. Chairman, as you indicated, we have to be concerned about the fact that the manufacturing clause has been declared GATT illegal. Here we are attempting to strengthen the GATT, enhance its credibility, respond to the criticisms of the GATT that exist throughout the world, including in this subcommittee, appropriate criticisms in my judgment, but how do we go about reaching that objective, which all of us share, if we patently violate the GATT ourselves.

We have a definitive GATT decision against the United States on this clause. We have no defense whatsoever for the continuation of the manufacturing clause. How can we possibly go to other countries and say don't violate the GATT, if we cavalierly and flagrantly violate it ourselves.

It seems to me that that alone should be sufficiently persuasive evidence to abandon the manufacturing clause at the earliest possible date. It should have been abandoned a long time ago.

There have been some suggestions, Mr. Chairman, as you undoubtedly know, that we somehow try to correct that by developing compromise proposals that would exempt a number of countries from the application of this law. I want to say for the record that those compromise proposals are no more appealing or impressive to me than the original legislation. It is impossible to correct a GATT-illegal law. Compromise is irrelevant. It may make it slightly less onerous, but it makes it no less illegal. It is like the difference between robbing a filling station and robbing a bank. Maybe there is a couple of million dollars involved in the bank and only $50 involved in the filling station, but in both cases it is robbery, and the same thing applies here. There is no way to put together compromise legislation that would be any less GATT-illegal than the existing legislation that is before you at the moment.

I would hope that the subcommittee would not be in any way enticed by the attractiveness of some kind of a compromise that would be no less illegal than the document now before you. That is not an appealing answer.

Then I would just like to go beyond that, Mr. Chairman, into a couple more of the precedents internationally that this legislation sets, undesirable precedents for the United States. The first one is that this is a copyright case. Basically, we are talking about copyright activity here. We, the United States, Mr. Chairman, ought to be a member of the international copyright institutions. We are not today, and one of the reasons we are not a member of the Berne Convention, which is the one of primary interest here, is that we don't qualify because of the existence of the manufacturing clause.

We don't have hands that are sufficiently clean to come in, and it seems to me that is a terrible position for the Government of the United States to be in. We ought to wash our hands and we ought to join that organization and we ought to be an active and vigorous participant.

Today we don't deserve membership in that organization, and we assuredly will not deserve it if this bill will once again become law. If we are to help formulate standards of conduct in the copyright area, then we have to be a part of the organizations that are involved in that process, and yet we are contemplating the passage of legislation that would exclude us from that process.

The second point I would make in that regard, which is an embellishment of the first, is that this is not only a copyright case, it is an intellectual property case more broadly defined. In other words, what we do with this legislation also has implications to what happens on intellectual property generally, not only copyrights but patents and counterfeiting activities, trademarks, and so on.

As you also know, and this subcommittee knows very well, one of the highest priorities of the Government of the United States is to straighten out all the violations of intellectual property laws and principles that exist throughout the world. This is one of the major trade problems facing all of us today, and it is an area in which the United States is the big loser. Violations of essential principles of intellectual property are costing U.S. exporters billions of dollars each year.

As you know, we have a section 301 action against the Government of Korea in this area, which we are negotiating right now. We have put a great deal of pressure on the Government of Singapore to enact corrective legislation in this area involving copyrights. We threatened section 301 actions against a number of other countries. Taiwan is an example. We are going to have extensive negotiations with a whole host of Latin American countries in this area, and we have also indicated that this will be one of our highest priorities in a new GATT round. So we have an immense round of intellectual property negotiations underway around the world, both bilaterally and ultimately multilaterally, and once again, we lose all our credibility, all our negotiating leverage, if we pass legislation like this, which is the antithesis of what we are asking the rest of the world to do.

It just puts us in a position that is totally compromising from our standpoint as negotiators. What we are asking many of these countries to do, Mr. Chairman, and what we are using the threat of retaliation under section 301 to do is precisely what we are contemplating doing here. In other words, those other countries would have just as much right to come back against us with a section 301 kind of action as we have to go after them with section 301 actions in a whole host of areas. It is an impossible situation for us.

The third point I would make from the standpoint of precedents relates to dispute settlement. As you also know, one of our strongest arguments for refurbishment of the GATT lies in the area of dispute settlement. We are disillusioned and frustrated by the inadequacies of the GATT dispute settlement mechanism and by the fact that countries can ignore the results of GATT dispute settlement efforts. Here we have a case where we were taken under dispute settlements to the GATT.

A finding was made against the United States, and we are contemplating blatantly ignoring that GATT decision. It is very difficult for us to go to Punta del Este, Uruguay, and do a new follow-up in the GATT round in which we once again make dispute settlement one of our highest priorities for improvement of the GATT and increasing the statute of that institution as an international body, when we flagrantly violate dispute settlement provisions that we are trying to improve for the rest of the world, to which we are trying to encourage adherence.

On copyright specifically, intellectual property generally, and dispute settlement, along with the infant industry situation, we have at least four basic principles of trade policy that are flagrantly violated in this case, and where we are put in a position of just completely compromising our own positions.

Finally, let me just make a comment on the jobs front, because the alleged rationale of this legislation is that it will save some American jobs, and we ought to do it because of the jobs that are attached hereto. I would simply assert to you, Mr. Chairman, that this legislation is going to cost this country jobs. It is not going to save jobs; it is going to cost jobs. It may save a few in the printing industry, if it were passed, but it is going to cost us a lot more jobs somewhere else because we have assured retaliation.

I realize that there will be people here, Mr. Chairman, who will tell you that nobody retaliates against the United States. We are

the big kid on the block, and nobody swings back at the big kid on the block. Well, the Government of Canada just swung back about 10 days ago. I would hope that somebody pays attention to that, and also pays attention to the fact that the European Community has already announced that it would retaliate against several American products, if this bill comes into law.

It makes no sense to me to attempt through sheer and flagrant protectionism to preserve jobs in an industry that is doing very well indeed only to give away jobs in other industries, and probably lose two or more jobs for every job that we preserve. That is a losing proposition, Mr. Chairman, in every aspect.

Finally, I would like to make a comment about leverage, because the other argument I hear over here is that we need this for leverage. This legislation has some reciprocity aspects to it, and reciprocity has a nice ring, and therefore we ought to get some reciprocity with other countries.

Mr. Chairman, there is no reciprocity involved and no leverage involved in the GATT-illegal legislation—none. Our negotiating partners, our fellow members of the GATT, are not unintelligent. They can read the GATT just as easily as we can. They all know that this case went to a GATT finding against the United States. They all know that they have a right to compensation or retaliation if this legislation bites in any way, and, therefore, they are not going to be impressed by any kind of legislation, whether it be the original provisions or compromise provisions.

If the compromise has no bite to it, then it is meaningless, and why put meaningless legislation on the books. We have enough legislation on the books, in the United States already without adding something that is absolutely meaningless. If it is going to have any bite to it, whether it be a harsh bite or a less harsh bite, it is GATT-illegal, and compensation and retaliation apply. So the legislation is a loser and all in all, Mr. Chairman, I would simply say that we find no redeeming qualities whatsoever to this legislation—none.

Chairman GIBBONS. That is a pretty damning statement.

Mr. FRENZEL. Other than that, how do you like this bill?

Chairman GIBBONS. I wish the authors were here.

Secretary Baldrige, we appreciate you coming. Your colleague has made a statement that is going to be hard to outdo as far as definiteness is concerned, but we look forward to hearing from you. Go right ahead whenever you are ready.

STATEMENT OF HON. MALCOLM BALDRIGE, SECRETARY OF COMMERCE

[The prepared statement begins at p. 80.]

Secretary BALDRIGE. I will go a step further, Mr. Chairman. Not only are there no redeeming features, not a one as the Ambassador said, but it is positively a minus. I will go that far.

Chairman GIBBONS. That is all right.

Secretary BALDRIGE. I am pleased to be here today to discuss this bill because we think it is important. Its main effect, obviously, is to deny copyright protection to U.S. authors unless they have their books, with certain exceptions, printed in the United States or in

Canada. It is certainly protectionistic. The administration opposes any bill that allows the manufacturing clause to remain on the books beyond its scheduled expiration date.

I would recommend to the President that he veto this or any other bill that extends it. The clause was added to the law in 1891, part of the arrangement with the printing industry, because we didn't protect foreign authors at that time under our copyright laws, and printers and publishers copied their works freely, paid no royalties. The United States became known as the Barbary Coast of literature. When we did amend the law finally to protect foreign authors in 1891, so the printers lost some of their ability to get something for nothing. They were going to have to face the reality of foreign competition. The price of their agreement at that time was a requirement that all books be made from plates that were typeset in the United States.

Well, whatever possible justification existed in 1891 doesn't exist today, but every time we talk about ending this clause, the printers predict disaster. We performed some major surgery on it back in 1954, when we exempted works of foreign authorship from these requirements. Printers then predicted our markets would be flooded by cheap imports. That fear obviously never materialized, and today that clause is an outright embarrassment.

We plead, Mr. Chairman, we actually plead with foreign countries to protect foreign intellectual property just as foreign authors once pleaded with us. Some have had whole industries that thrive on their continued ability to steal American ingenuity, and we expect them to stand up to these domestic interests and do what is right. Thus manufacturing clause gives them a first-rate excuse not to do that, particularly when it comes to modernizing their copyright laws as we are negotiating and asking them to do all the time.

It makes it easy for them to justify their own protectionist measures because of this protectionist measure that is still on the books. If this isn't bad enough, it puts us, as the Ambassador has noted, in direct violation of our GATT obligations. We just can't afford to ignore that the 1982 extension was GATT-illegal.

Contrary to what some think, that decision makes a lot of sense. No nation can announce it is going to bring its laws into compliance with GATT requirements, encourage other nations to accept its word, which is what we did in the 1979 unilateral trade negotiations, and then just simply reverse our course.

The 1982 extension of the clause was completely inconsistent with the GATT goal of stability and predictability in trade relations.

A GATT-illegal clause, I might add, also gives us absolutely no bargaining leverage. I don't know how many countries would be willing to bargain with us for an exemption from a clause that already gives them the right to retaliate. It just doesn't make sense.

Ignoring the GATT decision would be foolish for some other reasons too, Mr. Chairman. There are many pressing intellectual property issues that have to be resolved. Are copyright and patent terms long enough? Are all commercial goods patentable? Is software adequately protected? What about semiconductor chips? Those are not minor issues. As technology improves, what we are

seeing is more and more software itself being actually put on the chip. That is the wave of the future, and that is part of what we are trying to negotiate on intellectual property rights, and this clause is hurting us.

A comprehensive agreement on intellectual property under GATT should be our goal. Let's not jeopardize that by showing the GATT members we don't care what they think.

I will simply say that to subject ourselves to these problems for the sake of the manufacturing clause would be a serious mistake. The U.S. printing industry doesn't need it. Study after study has discounted predictions of severe economic dislocations. It is growing by 13,000 jobs a year. It has got a lot of advantages. It is technically sophisticated. Paper is cheaper here. Some printing has to be done quickly and can't be sent abroad. Ocean transport is expensive. It is just simplistic to assume that the small foreign labor cost differential will always be decisive.

In short, the Congress would do better to worry about jobs in the industries targeted for retaliation than the printing industry in their efforts to keep this clause.

The Senators who dissented from the Judiciary Committee's report on this bill said it best:

> The manufacturing clause walls American authors into isolation, walls American business out of the international trading system, and gives offense to those who should be our allies in both trade and copyright matters.

It should be allowed to expire. I couldn't agree more.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you. You made an excellent statement and some very fine points there. I don't have any questions for either one of you. I thank each one of you for coming here. I know you are very busy and want to get back to your jobs.

Let me say to both of you here, though, as I have tried to say to you privately, on the trade bill that has passed the House, I, as one, am ready, willing and able and anxious to sit down with the administration and talk about what can be done in that area this year, so if that message has not been made clear to the White House and everyone down there, I wish you would make it clear for me. I am not looking for issues. I am looking for solutions to problems. I will just knock it off there and leave that message with you. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I would like to thank both of our witnesses for their presentations.

Gentlemen, what has been the impact of counterfeiting of printed material on the printing industry in the United States? Has there been an impact, and if so, what is that impact?

Secretary BALDRIGE. I had a meeting a couple of years ago that set some things in motion. This meeting was with representatives of the book publishing industry. They complained bitterly about piracy. We got into the whole issue, including intellectual property rights, USTR and Commerce have been working hand in hand on that.

Our best estimates have to be somewhat imprecise, as you can see by the range, but the lowest figure for what American compa-

nies were losing in all kinds of intellectual property violations, is at least $14 billion a year, and it could be as high as $20 billion a year. I don't know if Clayton has any different figures, but those are the ones that we are using. It is a tremendous amount and it includes copying a trademarked product like Vaseline and so closely that you can hardly tell the difference unless you look down very closely at the bottom. It also includes knock offs of some of our industrial patented products from abroad.

It is a tremendous problem for American industry. It is one that we have to solve, and this manufacturing clause is a real cocklebur under the saddle blanket, because other countries can rightfully say to us, "Well, you are pushing us to open up or strengthen our patent and copyright laws and resist protectionism. How can you do that when you have got this manufacturing clause?" I don't know about the Ambassador, I just don't have a good answer for that.

Mr. SCHULZE. Do you have a success story where they said if you don't renew it we will outlaw counterfeiting, we will attack it on our end if you will take care of that? My next question would be, wouldn't a 1-year extension give you some muscle in opening, negotiations to eliminate counterfeiting on some of these things you just described?

Ambassador YEUTTER. Let me take that. We are involved in that. I can give you a yes answer as a matter of fact, Congressman Schulze, as to whether abandonment of this thing will provide a response elsewhere. In Singapore, where we have been putting a lot of pressure on the Government of Singapore to enact a copyright law that really would solve the kind of problem Secretary Baldrige is talking about, and they are in fact delaying final decisions on that law pending the action here.

In other words, if the manufacturing clause expires, we expect the Government of Singapore to move forward with their copyright law. If it does not expire, then they will reconsider, because they have their own pros and cons to evaluate in that respect. A 1-year extension, Congressman Schulze, will not help at all in my judgment, because there is just no leverage with an illegal program, none whatsoever. All a 1-year extension will do will be to stimulate immediate retaliation by a number of countries.

Secretary BALDRIGE. I would agree with Clayton 100 percent on that. It gives us no leverage, and it would stimulate retaliation.

Mr. SCHULZE. Have overseas trade barriers to our printers decreased or increased over the past decade?

Secretary BALDRIGE. I would say they decreased somewhat, because of the efforts we have been making on trying to get intellectual property rights legislation. I think it is just a start on it.

Mr. SCHULZE. I would feel that it has gone the other way. I just have the feeling that barriers have increased.

Ambassador YEUTTER. If that be the case, Congressman Schulze, that is a pretty subjective kind of call, I suppose, that simply means that we had better be more aggressive in attacking those overseas barriers. We have got rules to do that through section 301 and some of the other provisions of the trade law. This does not add anything in terms of the tools. Section 301 is infinitely more

useful to deal with that kind of an issue than the manufacturing clause.

Mr. SCHULZE. I wish I felt as positive about this as you two do. It seems to me that over time when we try to do something by example, other people say, "Ha, ha, ha, look at those idiots taking unilateral action."

As you know, I am not overwhelmed by GATT. I really am not bound, don't feel bound by what they do. I think that they do what is in the interests of many other economies rather than ours, but I would have hoped you would come in here and say we have got agreements that do X, Y and Z, if we don't do this, and have some real positive effect. We have a problem with counterfeiting. We have a large problem with counterfeiting, and as long as that continues, we are going to have demands, and increasing demands, for more stringent regulations here.

How about Canada? Canada maintains fairly high tariffs on catalogs and advertising material, in the 30-percent range. What are our tariff rates for these same items?

Ambassador YEUTTER. I don't have the figures in front of me, Congressman Schulze, but they are probably lower because on most items our tariffs are lower than those in Canada. As you well know, that is one of our primary objectives in the United States-Canada comprehensive bilateral negotiations, and obviously we can also reach them through the tariff negotiation of a new GATT round. As you also know, tariffs are not illegal, and so we don't have any basis to achieve a reduction in Canadian tariffs or anybody else's tariffs except in a negotiation.

Mr. SCHULZE. I guess the bottom line is you are both convinced that if this is not renewed, that we will see achievements in decreasing counterfeit and importation of counterfeiting?

Ambassador YEUTTER. Well, at least we go into the effort to achieve those objectives, Congressman Schulze, with clean hands.

Mr. SCHULZE. I really don't care whether we go in with clean hands. I am not as concerned about public opinion in the world as I am in achieving these results. If we can achieve greater results by making this thing twice as hard, then I am in favor of that.

Ambassador YEUTTER. But we can't, Congressman Schulze. I think that is the important point. Ignoring whether it is clean or dirty hands, if one could at least make some case for extending the manufacturing clause, if it would help achieve those objectives that you are talking about, but it absolutely will not. There is zero leverage involved in this legislation—zero.

Mr. SCHULZE. Thank you both for your testimony. Thank you, Mr. Chairman.

Chairman GIBBONS. Yes, sir. Mr. Frenzel, would you like to inquire?

Mr. FRENZEL. I would like to thank the witnesses for their testimony. It is obvious that the administration thinks this is important. We have told our trading partners that we are going to try to get rid of the issues we have been licked on in the GATT panel, and I think it's time to quit.

Clayton, with respect to your testimony on the job analysis, the Department of Labor has given us a high/low range of job opportu-

nities, I believe, that would be lost. Does anybody have any confidence in that range at all?

Ambassador YEUTTER. Well, as you may remember from the earlier disputes on this issue, all the way back 4 years or so ago, some of the numbers that were developed at that time were larger, and I think one of the motivations for extension of the manufacturing clause 4 years ago was because of the concern over job loss. I wasn't here at that time, but you may recall those debates, and the numbers that were before the Congress then indicated a substantial probable job loss if the clause were not extended.

There have been a number of studies since then by both the U.S. International Trade Commission, and the Department of Labor, which now would seem to indicate even within those rather wide ranges that the amount we are talking about is much, much lower, and may be as few as just a few thousand. Harvey Bale tells me the Congressional Research Service has also had a study in this area, and they came to similar results. And so we have really got the Labor Department, the International Trade Commission and the Congressional Research Service all now making estimates on the low side, so there really are apparently not that many jobs involved in whether this is or is not extended.

And, of course, as you heard me make a point when you came in, I really think that is irrelevant in any case in the sense that we are clearly not going to have a net gain by extending the clause in any case, because retaliation is not a threat in this case. Retaliation is a sure thing.

Mr. FRENZEL. If we have any jobs by virtue of the manufacturing clause, that is exactly like a copyright violation in another country. We are cheating on the rules, aren't we?

Ambassador YEUTTER. Precisely. It becomes very difficult to justify job creation on this basis.

Mr. FRENZEL. You said earlier I think that you thought the potential for job loss under retaliation is exceeded by a factor of two to one, did you say?

Ambassador YEUTTER. It is difficult to say, except we know that the European Community is going to retaliate against something in the way of $300 to $500 million worth of U.S. exports. That is a lot, and it is impossible to determine job loss until we know precisely what those retaliatory measures are going to be. But it is rather clear that this will not be a mild retaliation. It will be a very harsh retaliation.

Mr. FRENZEL. Mr. Secretary, do you have a similar feeling to the Ambassador's in that regard? Are we likely to lose more jobs through retaliation than we could protect under an extension of the clause?

Secretary BALDRIGE. I really don't think there is much question about it. I don't know whether it would be two to one, but job loss would certainly exceed whatever advantage the U.S. printing industry might get, and I say that for a couple of reasons. I think there was some confusion about some of the estimates on job losses because of the 1981 Department of Labor survey. That survey considered all products of the U.S. commercial printing industry to be subject to this clause, and that isn't the case.

The clause doesn't apply in some cases because of the pictorial or design nature of the products, that is like catalogs, greeting cards, and so forth, advertising material, labels. It does apply to magazines, books, shopping news, for example, and in a lot of those cases there are very time-sensitive deadlines, distribution problems, communication, transportation across the ocean, and so forth. That means that the U.S. industry is competitive.

I think you can make a case for the fact that there will be no actual jobs lost as a result of this, or relatively very few. There would be some what fewer potential job increases in the future that the industry could have had, but I don't think there will be severe layoffs. We have got to remember the U.S. industry is in book publishing, magazines, that kind of product, and it is very, very competitive now, and that the labor costs, where we might not be competitive, amount to 10 to 15 percent of the total cost.

Our paper is probably cheaper than most places around the world, and transportation costs are pretty high in this kind of an area, so it is difficult for me to see where we would get any advantage in the job loss versus job gain area, when we look at the retaliation that would come about.

Ambassador YEUTTER. Congressman Frenzel, if I may just supplement that for 1 second. I am told that our Labor Department is now predicting a 400,000-job increase for the printing industry between now and 1995, so the industry obviously, if they are at all accurate, the industry obviously will do quite well in 1995, in the next decade.

Mr. FRENZEL. Thank you. I yield my time, Mr. Chairman.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

I would like to welcome our two distinguished guests, and say I am sorry that I was not here for their testimony. I have had a chance to glance through it.

I would like to pick up on this job loss possibility. Both of you have said that you don't think there will be any jobs lost, or few if any; is that correct? Presumably that takes into account, as you said, the competitive nature of our industry. What happens if another country, not to mention names, but some Far East island country, started—not Japan—started subsidizing its printing industry, and providing an advantage that way, not a normal competitive advantage?

Ambassador YEUTTER. Obviously, Congressman Pease, if they were engaged in subsidy programs, we have the laws to attack those through our countervailing duty programs here that are administered by Secretary Baldrige. Certainly the manufacturing clause would be an important way to offset those kinds of practices. That is why we have the countervailing duties.

Mr. PEASE. Do I remember correctly there is an injury determination required?

Ambassador YEUTTER. That is correct.

Mr. PEASE. For countervailing duty?

Ambassador YEUTTER. That is correct.

Mr. PEASE. And that is the province of the International Trade Commission?

Ambassador YEUTTER. That is correct.

Mr. PEASE. How much would it cost a printing company or an industry in the United States to bring a countervailing duty suit, to prove that some island country, not Japan, in the Far East were subsidizing its exports to our country?

Ambassador YEUTTER. It would cost a substantial amount, without any question, but it is the U.S. Congress that establishes the basic provisions under which that activity is undertaken, so the cost can be reduced, I suppose, if the Congress wants to change the law. But certainly we believe that that is a sound modus operandi for handling export subsidy cases. I cannot defend, Mr. Pease, in any way doing it in the manner that is suggested here, which is just blatantly GATT-illegal.

Secretary BALDRIGE. I would add to that that there certainly is some cost involved in bringing a countervailing duty case. We can ameliorate that in the Commerce Department by helping, if it is appropriate, but you can't make it cost free. We also have to think about cost when we think about the way some of our antitrust laws, and particularly some of our product liability laws have worked out, where it is very easy for a lawyer, a trial lawyer, to take a case on contingency, because of what he may get out of it. It costs the plaintiff practically nothing if he takes it on a contingency fee.

Now, the sad fact is if we had countervailing duty investigations that were absolutely without cost, you can imagine what would happen, Congressman. We would have every industry or every company who thought they had even a ghost of a chance coming in. These laws are serious. We take them seriously. We prosecute under them. We have, I think, had decisions handed down that would be three times the amount that they were 2 or 3 years ago, but we just don't think it ought to be without any cost to the plaintiff.

Mr. PEASE. Mr. Secretary, do you have the authority under current law to self initiate countervailing duty cases?

Secretary BALDRIGE. Yes, sir, if we think it is appropriate we can.

Mr. PEASE. Have you done that?

Secretary BALDRIGE. Yes.

Mr. PEASE. How many times in the last year or so?

Secretary BALDRIGE. Oh, we try not to do it too often, for the same reason I just told you. I think we have done it twice in the last 2 years, last year. In the latest, we self initiated a case against semiconductors of 256k rams and higher. That is one of the very few we have self initiated.

Mr. PEASE. When the administration comes around to the position of continuing with the Senate to write a trade bill later on this summer, would you suggest that we nudge you into more self-initiation as we have in the 301 area, in the House bill?

Secretary BALDRIGE. Well, we get nudged in all kinds of directions by the Senate and the House, Mr. Congressman. I think that is somewhat of a slippery slope. When do you stop? If we were to self initiate every case that came up just on request, I think we would be inundated, and not with necessarily the right kinds of cases.

Ambassador YEUTTER. I agree with that, Secretary Baldrige, and I would just like to expound on that a little bit, if I may, Congress-

man Pease. We can have the American taxpayer finance everything that goes on in this country, if we wish, I suppose, but it seems to me that the general public has a right to say just when is a case sufficiently persuasive and sufficiently in the overall national interest that the taxpayer ought to pick up the tab.

It seems to me, as Secretary Baldrige is alluding, that in the vast majority of cases, the industry that has a grievance ought to be prepared to pursue it on its own. If the grievance is not sufficiently persuasive to justify an industry effort through a trade association or whatever the group of plaintiffs may be, then maybe it is not a case that really deserves major concern within the U.S. Government.

Clearly, some industries have greater financial resources available to them than others do, but I certainly would react unfavorably to a suggestion that the American taxpayer pick up the tab on thousands of antidumping and subsidy countervailing duty cases. I just don't think your constituents or anybody else's constituents would like to see that result.

Mr. PEASE. Would you grant that there maybe a difference between the current pattern of initiating two countervailing duty cases in 2 years on the one hand, and the effect you postulate of having to do thousands of them? Is there some reasonable number in between there that people might agree on?

Ambassador YEUTTER. Well, that is a judgment call, of course, Congressman Pease, but I really believe that self-initiation ought to be done on rare occasions. There has to be a particular motivation to have the Government of the United States undertake these efforts. Obviously, industries love it, if the Government will do it, because they don't have to pay the legal fees and they don't have to do the work. They can get a U.S. Government agency to do all of the necessary work and have the American taxpayer pick up the tab. But whether that is wise and prudent is another matter.

Mr. PEASE. I guess what concerns me is this. You are coming up here and asking us to let this law expire, partially on your assurance "that few, if any, jobs will be lost, if the clause is terminated." I am just wondering what your attitude will be if a year from now, if this does expire, imports are coming into this country in this field in wholesale lots, and coming in in a clearly subsidized fashion. At that point will you feel any responsibility at all to redress that, or will you say: Whoops, we made a little mistake, but it is up to the industry to foot the bill to correct it?

Ambassador YEUTTER. I would respond in two ways. One, it seems to me there are adequate provisions under existing law to deal with that kind of problem, if it exists. If it be a subsidy countervailing duty case, there are provisions under law to handle that. Self-initiation could be considered by Secretary Baldrige.

The same thing would be if it were a dumping kind of case. If it be just inundation of imports in such a way that import relief ought to be provided under section 201, the escape clause provision, why, obviously there are ways of initiating that case, too.

In other words, the printing industry, which is the case, which is the one at issue here, has all three of those options available to it for protection against imports, if there be need for that kind of pro-

tection. The section 201 escape clause case is subject to the countervailing duty action and the antidumping action.

I would go beyond that to say that this would be the worst of all results, because extension of the manufacturing clause is going to cost jobs. As I said a little bit earlier, Congressman Pease, you may preserve some job opportunities in the printing industry, but you are going to lose more of them elsewhere. It is sufficiently important that we are prepared to save some additional job opportunities in the printing industry.

In other words, if this industry is in such bad shape financially that we ought to extend the manufacturing clause—I don't think it is, but if this industry is ready to go down the tubes, and the casket is open and the industry is about to fall in, then maybe there is at least some rationale for extending the manufacturing clause. I don't think there is any rationale whatsoever in that regard, but let's make sure that everybody understands that the jobs that are preserved here, if any—and and we think there are few—are going to be far more than offset by jobs lost elsewhere, because we are clearly going to have retaliation in this case.

Maybe retaliation would or would not hit the jobs in your district, but it is going to hit the jobs in somebody's district and somebody is going to pay the price. There is no free lunch on this clause. We are going to be a net loser.

Mr. PEASE. Mr. Secretary, how long does it take to carry a countervailing duty suit or case through from initiation to completion normally.

Secretary BALDRIGE. Well, somewhere around 5 months to get what we call the preliminary determination. At that point, if we find subsidies, we make the importer put up the equivalent amount of subsidies into a bond, so he has to put up the money, and he is denied the use of that money from then on.

On the final determination, which may take another 2 or 3 months, if it is found that there were subsidies, those funds are collected, and the countervailing duty tariff is put on. So we should be able to do it in about 5 months. That is the way it has been running.

Mr. PEASE. Thank you.

Does it disturb you at all as we contemplate the filing of countervailing duty cases by the industry, paid by the industry, that the determination of injury that has to be made by the ITC is a critical factor and that the new Chairman of the ITC, just appointed by the President, found in 16 out of the last 20 countervailing duty antidumping cases that there was no injury and 4 out of the 20 that there was only partial injury? Does that bother you at all?

Secretary BALDRIGE. Well, you are talking about a particular individual there. The array of five Commissioners leading up to those decision does not bother me. I have a good deal of respect for the ITC. I think it is important to have an agency do that work that is not part of the Commerce Department. I think it lends some balance to it. I think it is a very technical question, What is injury?

I really think the ITC has overall done a good job. I, myself, have disagreed with them on several of their decisions, but that doesn't mean I would like to pack the ITC to make it come out the way I want it to all the time. I think now it has some stature, people be-

lieve it is credible when they make a decision, and I think separation of powers is part of our whole government system. So I wouldn't change it.

Mr. PEASE. I certainly agree with you on that, the separation of powers is good. But isn't it true, though, in a countervailing duty case, proceedings are stopped cold in their tracks if the ITC finds there is no injury?

Secretary BALDRIGE. Yes, unless we are dealing with a country that has not signed a subsidies code or a member of GATT. They don't get an injury test, so that doesn't go to the ITC.

Mr. PEASE. So if the new Chairman and the new Vice Chairman continue the trend of decisions that they have established over the last year or so, we may have a countervailing duty statute that is inoperable because there will be very few injury determinations made.

Secretary BALDRIGE. I sincerely doubt that, Mr. Congressman. I just don't believe the ITC will function that way. As I say, their past record has been good. I haven't agreed with every one, I disagreed very strongly with one or two of their decisions, but by and large I believe they conduct themselves very well. I believe you can take the point you make and apply it to the Federal Reserve Board, the Supreme Court or any other body like that. It is independent or semi-independent. We can't, and should not be able to, always dictate their decisions.

Mr. PEASE. Well, I don't want to belabor this, Mr. Chairman. I guess the point I am trying to make is an important industry in the United States that provides a lot of jobs is being asked to give up this manufacturing clause on the assurance from the administration they aren't going to lose any jobs. And yet it appears to me that if that assurance turns out not to be the case because of deliberate subsidies on the part of some of our trading competitors, that this industry in the United States can't expect to look to the U.S. Government to help them out very much.

And if I were in their position, I would be a little nervous about giving up something under those circumstances.

Secretary BALDRIGE. I can't prejudge, Mr. Congressman, whether or not, going back to your original point, we would self-initiate there. It is a hypothetical case. We haven't had a chance to look at the facts to determine if it does come out that way. So I can't say we would or we wouldn't, I just say we do it very rarely, and we have to have good reason to do it.

But there are all of the recourses to law that any other industry has in the United States. And what we in the administration find it difficult to understand is why the printing industry should have this kind of protection when it is so rare. I don't know of another industry in the same boat. It is a unique case almost.

Ambassador YEUTTER. Lest there be no misunderstanding, let me add that in my judgment this clause does not deserve an extension irrespective of what the job impact may be. We cannot support the extension of a piece of legislation that simply is inappropriate for this country to embrace, no matter what the job impact may be. I happen to think the job impact will be negative if it is extended, but sometimes you got to stand up for principle, and the principles is this law and this clause should not be extended.

Mr. PEASE [presiding]. Mr. Chairman, I have gone on far too long—I have just been told I am the chairman.

I have a further line of questions I would like to ask. Mr. Crane, if you will indulge me for one more minute, I will turn the questioning over to you.

I can't resist the temptation to ask Ambassador Yeutter if he considers that in this manufacturing clause bill, part of the escape clause which would allow countries to not be subject to the manufacturing clause involves the question of worker rights. I know that is a subject in which he is interested in. One of the provisions will allow countries to escape states—we have to look at whether they are or are not trying to advance worker rights. Is that a strength or weakness of this bill in your view?

Ambassador YEUTTER. It is an irrelevancy, Mr. Pease, simply because any criteria we build into this legislation is of no applicability internationally. No one will recognize those because the bill is illegal under the GATT. No one, as I said before you came in, there is no leverage on worker rights or any other issue in this bill because no GATT member will pay attention. There is no reason for them to pay attention because we have a declaration of GATT illegality.

That is the difference between today versus 4 years ago when this bill was passed. At least 4 years ago, we did not have a GATT case against us. In the past 4 years, the case has been taken to GATT, there has been a finding against the United States, which gives every GATT member a right to compensation or retaliation. There is nothing we can do in this bill to any way frighten them. They don't have to pay attention to them.

Secretary BALDRIGE. Congressman, could I add something there? International workers' rights is a subject that is very complicated for us to use in deciding whether to grant anything. Every country could come back at us if we didn't live up to their idea of what workers rights are. And I could gently point out one of the first things they might do is come to the U.S. Congress and say,

> Well, you don't follow the child labor laws, you are not bound by equal opportunity employment, you are not bound by OSHA, you have exempted yourselves from all those. So, therefore, the U.S. Congress that passed this bill does not have the proper workers' rights, and we are going to retaliate.

Mr. FRENZEL. It is OK if we don't produce anything.

Mr. PEASE. Mr. Secretary, as one of those who has long favored making Congress subject to all those laws, I would welcome that kind of incentive and appreciate for us to do something. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman.

I, too, want to express appreciation for our two witnesses here this morning and apologize for my tardy arrival. I had a conflicting engagement.

One of the arguments that has been advanced in support of this legislation, and I will address this to both of you, is that it provides for rough equivalency and, thus, with a contemplated phasedown in elimination of the manufacturing clause, but by reenacting it at this time, it exerts a pressure on some of our trading partners to provide greater access to markets. How would you respond?

Ambassador YEUTTER. I would respond, Congressman Crane, simply by saying that is a totally fallacious argument. And, again,

it goes back to my point to Congressman Pease a moment ago, this is illegal legislation; therefore, there is no weaponry there to demand or even request reciprocity. If the legislation had even a ring of legality to it, there might be some benefit in that kind of potential tradeoff. But when it is blatantly GATT illegal and has been so found, then that all becomes totally irrelevant and inapplicable.

So as I put it earlier, the leverage on any other country on any aspect of this problem is zero.

Mr. CRANE. Is that GATT illegality the result of the 1984 GATT panel determination?

Ambassador YEUTTER. That is correct.

Mr. CRANE. The critics of you, Mr. Yeutter, suggest that you failed to represent the industry at that hearing by utilizing U.S. veto. How do you respond to that?

Ambassador YEUTTER. I was not here in 1984, as you know, Mr. Crane.

Mr. CRANE. I am sorry; your predecessor.

Ambassador YEUTTER. So I really cannot answer that. But I am told that the United States did defend that case vigorously, notwithstanding its unpersuasiveness. Had I been here, I might have had some difficulty defending it vigorously because I clearly do not believe in the merits of this case.

As to why the United States did not veto, I can't answer that question, but suffice it to say I don't believe in vetoing decisions in the GATT simply because they are against us, and neither do I believe other countries ought to veto simply because they are against them. That makes a farce of the GATT, of course, when it happens. There may be tactical reasons why we would do that from time to time, and we are indicating our displeasure at some of our trading partners for doing that. That calls for changing the rules, so this kind of nonsense does not occur.

But clearly we did not have an adequate defense in GATT on this case, and it is easy to understand, Mr. Crane, why we would not defend the case very satisfactorily.

Mr. CRANE. A 1981 U.S. Department of Labor study anticipated a loss of up to 172,000 jobs in the printing industry and a total loss of 367,000 job opportunities throughout our economy if the manufacturing clause expired. Then there was a followup study apparently in 1986, and it did not seem to confirm the 1981 study, and again perhaps this is an indirect indictment of your predecessor, but the DOL study in 1986 has allegedly been sloppily and wrongfully manipulated to support a politically motivated goal. How do you respond to that?

Secretary BALDRIGE. Well, if I could take that gentle question, Mr. Crane, I think the reason for the discrepancy is carefully explained in Secretary Brock's preface to the 1986 study. As he pointed out, that later study is different on certain points. The 1981 study considered products of the U.S. commercial printing industry to be subject to this clause. It assumed the clause applied to all of the products—or almost all of the products—of the industry. This is clearly not the case. The 1986 study explains that the clause doesn't apply to a lot of the printed products because of their pictorial or design nature. Catalogues, greeting cards, direct mail, and

the like are not covered by this clause, so it shouldn't be taken into account on potential job losses.

Advertising material, labels, decals, they don't apply. This clause doesn't cover them. Everywhere it does apply, there are many instances where timing is very expensive and they can't wait for it to come from abroad, the distribution is difficult and time is of the essence. Their communication and transportation requirements mitigate against foreign manufacturers. It costs a lot to ship from the Far East to the United States.

When you take into account the actual products that will be affected, narrow it down to that, then consider that labor cost is only 10 to 15 percent of the total manufacturing cost, and then consider that our paper cost is in good shape compared to other people around the world, I think the 1986 study is more accurate by far than the 1981 study, and the 1986 study is also closer to the other studies that have been made by the ITC and so forth.

Mr. CRANE. This same criticism of that 1986 study says that the study fails to note that the overall trade surplus in printing and publishing industries is on a clear path of decline. It cites again, Department of Commerce statistics, that exports exceeded imports by 102 percent in 1982, 66 percent in 1983, down to 29 percent by 1984. For the first 10 months of 1985, the dollar value of book exports decreased by 6.3 percent while the dollar value of book imports increased by 145 percent.

But even more significant in terms of units of books, the United States became a net importer of books in 1983. So now the conclusion is we are about to become a net importer of books measured by dollar value as well. How do you respond to that out of your department?

Secretary BALDRIGE. I think that the printing industry's exports have been affected the same way as everybody else's. A common thread through all of our industrial exports is what the strength of the dollar did to our competitiveness abroad. During the period from 1981 through the end of last year, the strength of the dollar has affected the imports of almost every industry I know. So I don't think that is a legitimate point in connection with the manufacturing clause.

Ambassador YEUTTER. If we are going to solve that problem, Mr. Crane, it seems to me doing it through macroeconomic policy makes more sense than extending the manufacturing clause.

Mr. CRANE. One final question, and this has to do with barriers in Canada, 30.5 percent tariff on catalogues and 25.9 tariff on advertising and printed matter, and also in Canada discriminatory mail rates, advertising content restrictions and special tax code restrictions, and the conclusion is that again the Commerce Department has estimated these Canadian trade barriers are alone costing us up to $350 million per year. How would you answer that?

Secretary BALDRIGE. I think Clayton should comment on this too, but my reaction would be as follows. There are much higher barriers in Canada than we have toward their printed products. Part of that is a strong Canadian feeling, we can say it is wrong but they feel that their culture is being overrun by other countries, particularly the United States.

They want to develop and keep developing their own indigenous cultural kinds of activities, books, magazines, textbooks for schools and so forth. One of the ways they do that is by having high import barriers.

We don't agree with it. We are working constantly trying to get those barriers lowered. When we work on the free trade agreement, that will be one of the subjects on the table for negotiation.

But what you say is true, but the reason is, I believe, the one I have given you.

Ambassador YEUTTER. I would just add to that that I am prepared to commit to you, Congressman Crane, and to the subcommittee that that will be one of our highest negotiating priorities in the United States-Canada comprehensive free trade negotiation. It should be—as you know, the basic intent of that agreement is to take tariffs between the two countries down to zero if we possibly can. If we can do that in everything, in these products, it will be a big boost to the U.S. printing industry because they are at a disadvantage today.

With respect to the other items which are nontariff kinds of things, to the degree those are really indispensable barriers, we should attack them immediately, and we are clearly prepared to do that. We would be more than happy to work with the American printing industry in achieving that objective. I am told there have been some objections in the past that the U.S. Government has been inadequately responsive in this area. We will be downright responsive, Congressman Crane, because we don't see any greater justification for Canadian trade barriers than anybody else's trade barriers. They need to come in and work with us and articulate their priorities so we can work on them with the Canadians.

Mr. CRANE. Based upon the Canadians' response to the President's announcement of the tariffs on cedar shakes—they set up a dollar-for-dollar equivalent retaliatory piece of impediment to free trade—don't you think the removal of this legislation would be a gratuitous concession? Based upon their actions would not a quid pro quo be dictated by the extension of the manufacturing clause?

Ambassador YEUTTER. That is a good question, Congressman Crane, and the answer is that we will never get any kind of a quid pro quo in this area because of the GATT illegality of the measure. There is nothing there to sell, there is no trading stock, it is worth not one penny.

So, extension, or even the threat of extension of the manufacturing clause, is not going to get the attention of anybody around the world, the Canadians, or anybody else.

Secretary BALDRIGE. Mr. Congressman, Canada would say this. Look, we lowered our tariffs back when the clause was properly grandfathered in GATT, then you had an arguable right to it, and we did lower our tariffs. Now it has been declared illegal under GATT, and we are not going to let you use it as a club to extract concessions from us.

I mean, in short, if you want to negotiate on that, you will end up negotiating with yourselves. You can see their position. I don't think I have been accused of being easy-going in any set of negotiations, but I don't see how you can use a GATT illegal clause as a negotiating tool. If somebody tried to do that with us, we would say

"What are you talking about? That is illegal under GATT, we are not going to give you anything for getting rid of that." We ask other countries to do that all the time, get rid of something illegal under GATT without compensation.

Mr. CRANE. But doesn't that tend to reinforce, then, the charge that your predecessor—and I apologize, Clayton—really let us down by not invoking a veto, which he could have done?

Ambassador YEUTTER. Well, it is hard for me to second guess that decision not knowing what all the motivations were, but obviously that issue is behind us, and if there are any potential trading stock there, clearly it did disappear when the report was approved. But I don't really want to second guess or criticize, because I don't know the full scope of the analysis that went into that decision.

Mr. CRANE. The only reason I raise that point is, again, does that not possibly fall within the context of making one of those gratuitous concessions to trading partners without getting any assurances of reciprocity and could not the same argument be used about termination of the manufacturing clause, one of those unilateral concessions on our part without having any assurances of reciprocity?

Ambassador YEUTTER. Yes. But at this stage of the proceedings, Mr. Crane, nobody is going to pay us one dime for the manufacturing clause. If the Japanese came to us with that kind of an issue, and they have as a matter of fact on some of their GATT illegal agricultural quotas, we would simply tell them "Sorry, fellows, we are not going to pay you one penny to do anything about those programs," and we have been telling them that in the last few weeks. So we are not going to be able to extract one single concession of any kind through the use of the manufacturing clause, not one.

Mr. CRANE. I thank you, gentlemen, for your testimony and yield back the balance of my time.

Chairman GIBBONS. Mr. Russo.

Mr. RUSSO. Thank you very much, Mr. Chairman.

Let me just ask Mr. Yeutter and Mr. Baldrige, if we found out after the manufacturing clause expired that the printing industry was being severely damaged and there was a tremendous loss of jobs, what could the industry do?

Secretary BALDRIGE. If they thought that the loss was a result of either material being subsidized by a foreign government and shipped in here or dumped—that is, sold below the home market value or sold below cost—they could bring a case under our countervailing duty laws or antidumping laws.

Mr. RUSSO. How long would that take?

Secretary BALDRIGE. Well, it is difficult to predict exactly, but let me use a figure of about 5 months from the time we start the case until we get a preliminary determination.

If they did not feel that the increase in imports was due to unfair trading practices, but they were simply being injured and needed time to restructure to get modern to be able to compete, then they could apply under section 201 to the International Trade Commission for a determination as to whether they had, in fact, been injured by the imports. If the ITC said they had, it would make recommendations about remedies to the President. Then it would be

the President's job to either accept or change those recommendations.

Mr. RUSSO. Mr. Secretary, would it take the President as long to respond to that as it did in the machine tool case?

Secretary BALDRIGE. I would say the answer is pretty definitely no.

Ambassador YEUTTER. In fact, there is statutory time limits on that one, Congressman Russo, so it is assuredly no in that case.

Mr. RUSSO. Under the terms of the Florence Convention, I understand the industry could not petition the ITC for relief. Is that a fact?

Secretary BALDRIGE. An industry that feels that it has been injured and wants temporary relief in order to restructure and get competitive again, and that is not alleging unfair trade practices, can go to the ITC under 201, ask for an injury finding and if the ITC finds injury, obtain some kind of temporary relief spreading over 3 to 5 years. If it is tariffs, or something, it starts up with a higher tariff and ends up the fifth year with a lower tariff. That is a possibility for any industry that feels it has been injured but needs time to restructure, but not by unfair trading practices.

Mr. RUSSO. I have been led to believe because the United States is a signatory to the Florence Convention, which prohibits the placement of import duties on books, publications and printed documents, the printing industry could not petition the ITC for relief under the 1974 Trade Act. I am asking that question to see if that is accurate.

Ambassador YEUTTER. I just checked with all the people we have here, Congressman Russo, and nobody is quite sure what the answer is to that question. We will try to provide it for you.

Mr. RUSSO. I certainly would appreciate an answer to that.

Mr. Chairman, I have to apologize for taking so long to get here this morning. Part of the problem is we are very close to a conference agreement on the budget, so I have been in negotiations all morning.

Chairman GIBBONS. Good luck.

Mr. RUSSO. I hope I have as much luck with the manufacturing clause as I have had on the Budget Committee. I appreciate the opportunity to ask questions.

Chairman GIBBONS. Thank you, gentlemen, for coming and for your illuminating testimony.

We will go next to an industry panel, Mr. Arthur Prine; the Graphic Communications International Union, Mr. John Greer; and the Industrial Union Department of the AFL–CIO, Mr. Howard Samuel.

It is my intention to go straight through. Mr. Prine, we will hear from you first.

STATEMENT OF ARTHUR C. PRINE, JR., VICE PRESIDENT, CORPORATE RELATIONS, R.R. DONNELLEY & SONS CO., ON BEHALF OF BOOK MANUFACTURERS' INSTITUTE, THE PRINTING INDUSTRIES OF AMERICA, AND THE NATIONAL ASSOCIATION OF PRINTERS & LITHOGRAPHERS, ACCOMPANIED BY BENJAMIN Y. COOPER, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, PRINTING INDUSTRIES OF AMERICA

[The prepared statement begins at p. 84.]

Mr. PRINE. First of all, I should say I am Art Prine, and I am an officer of R.R. Donnelley & Sons Co. in Chicago, IL, and even though we are the largest printer in the country, I am representing today an industry which in terms of establishments is the largest industry in the country. I might also mention I think we are now the third largest printer in England, so we have had some opportunity to look at this question from both sides of the water.

I think the resolution of the issue we are dealing with today, like so many others we see, depends on our answers to one or two core questions. With all due respect, I think much of what we have been hearing in this debate is irrelevant and peripheral, at best. The charge that this bill is protectionist is just not so.

H.R. 4696 is nothing like the old manufacturing clause. It provides for a phasing out of the clause as we gain roughly equal access, and in this way it becomes an instrument to promote free trade. So all this talk of protectionism and infant industry and so forth is irrelevant.

Second, the argument that extending the manufacturing clause violates GATT is without real significance. We believe the USTR badly mishandled this case, but even with the technical violation, retaliation would have to be keyed to damage, and there is little, if any, damage if the EC countries are soon granted exemption as we expect, and so the talk abut GATT violations is equally irrelevant.

Third, the charge that this bill compromises our ability to qualify for the Berne Convention is also a scarecrow. The Register of Copyrights has already testified that he saw this bill as presenting no real problems to U.S. succession to the Berne Convention. Let's tear down these three scarecrows and deal with the core issue, and, in my opinion, that issue is this:

What is the best way to achieve free trade in printing? Shall we continue on a course of unilateral trade disarmament, as we have for the last ten years, hoping that after we provide total access to our markets foreign nations can be trusted to reciprocate, or shall we use the manufacturing clause as a bargaining chip phasing it out as other countries provide us with roughly equivalent trading access?

The history of the last 10 years proves conclusively that we cannot rely on unilateral trade disarmament and blind faith. Ten years ago, with our strong support, and I appeared here to testify on behalf of those measures, we granted Canada total exception to the clause, and we sharply reduced the manufacturing clause coverage for the rest of the world. We redefined the manufacturing process to permit lithographic type setting to be done abroad, we redefined the cover materials so it covered only nonliterary materials, and this permitted many, many kinds of books and other mate-

rials, particularly picture books, beautiful four-color picture books, to go overseas.

We increased the numerical exception from 1,500 to 2,000. It was not covered by the clause. There was joy in Canada when we did this and a small Christmas in the Pacific Basin and other printing capitals of the world.

What has happened in the intervening years? As we printers try to sell abroad, we are faced with a staggering array of trade barriers, the worst of which are in Canada and the Pacific Basin. In Canada today, when our salesmen try to sell printing there, we are faced with a 25.9-percent tariff on advertising material and other printed matter and a 30.5-percent tariff on catalogs.

Also, in Canada, U.S. magazines are faced with a barrage of trade barriers. If a U.S. magazine publisher and printer tries to ship a magazine into Canada, the first test is whether or not as much as 5 percent of the advertising is directed to a Canadian audience. If it is, that magazine is stopped at the border. If Canada consents to let the magazine in, they then charge something like five or six times as much postage to mail that magazine as they do for a Canadian publication. And if a Canadian advertiser dares to advertise in one of these U.S. magazines, he is not—and that advertising obviously is directed at the Canadian market—he is not permitted under Canadian tax laws to deduct that cost of advertising as a cost of doing business.

Simply stated, 10 years ago, Canada happily accepted a full exception from the clause, and we are much worse off today as they have built higher trade walls than they had 10 years ago.

Our own Commerce Department, and I think this figure was alluded to earlier, has estimated Canadian trade barriers is costing us as much as $350 million per year. Is it any wonder that our Nation's second largest trade deficit is with Canada?

In the Pacific Basin, we also know intellectual piracy of books and other printed materials is costing us hundreds of millions of dollars a year. As we look back over the last ten years, I cannot think of one case in which our government has succeeded in eliminating or significantly reducing even one foreign printing trade barrier.

From the standpoint of our industry at least, it appears that virtually all of our Government's efforts have been aimed at eliminating what is left of the manufacturing clause. One must wonder how much better the cause of free trade would have been served if our own Government had pursued with equal vigor the task of encouraging foreign governments to pull down their many barriers. The time for unilateral trade disarmament in printing and blind naivety in others is over. We simply should not continue to rely on an approach that has failed over the last 10 years.

In conclusion, running back on these points for just a second, all this talk about protectionism and so forth is irrelevant. We are not an infant industry, we are not predicting total disaster, we do know that there would be significant loss of business and jobs.

We are not asking for protection. We ask only for a fair chance to sell abroad. H.R. 4696 is a bill to promote free trade. We know H.R. 4696 will result in serious loss of jobs in our business, but if you will only help us to gain fair access to foreign markets, we can

sell more U.S. products in those markets and thereby offset business and job loss.

I repeat, the core issue is how best to achieve fair free trade. We have been engaged in unilateral trade disarmament for 10 years. In rough terms, 10 years ago we cut the clause in half, and during that time, our Government has not succeeded in eliminating or significantly reducing even one foreign printing trade barrier.

As we try to sell abroad today, we are faced with an overwhelming array of trade barriers, the worst in our history. And yet today our Commerce Department wants us to continue down this same wicked way. They want us to complete our unilateral disarmament. They want us to stand naked before the world, they want us to place our faith and trust in countries who for the past 10 years have been characterized by dishonor, deceit and piracy.

These are harsh words, but I am prepared to support them against anyone who wishes to choose to challenge them.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, Mr. Prine. You said you were going to be direct. You certainly were.

Next we have Mr. Jack Greer.

STATEMENT OF JOHN M. GREER, VICE PRESIDENT, GRAPHIC COMMUNICATIONS INTERNATIONAL UNION

[The prepared statement begins at p. 89.]

Mr. GREER. Thank you, Mr. Chairman.

My name is Jack Greer. I am vice president of the Graphic Communications International Union, an affiliate of the AFL-CIO. I am testifying today on behalf of the 200,000 members of the GCIU, as well as the membership of the Newspaper Guild in support of H.R. 4696.

It has been pointed out already this morning in the discussions, H.R. 4696 differs from present law in that it will extend the manufacturing clause while allowing the U.S. Trade Representative and the Secretary of Labor to exempt countries from the manufacturing clause by certifying to Congress that the country will, one, extend full copyright protection to foreign nationals; two, is a fair trading partner in printed goods; and, three, protects the basic rights of its workers as defined by the Trade Act of 1974.

This fresh approach embodied in H.R. 4696 assures not only the continued health of our printing industry but also establishes a unique mechanism to recognize and reward our true fair trading partners.

Since 1981, the manufacturing clause has been the trade law for the American printing industry. In this historic role, the manufacturing clause has encouraged the development of U.S. printing into the most productive, modern printing industry in the world. Our domestic printing industry employs 1.3 million hard-working men and women. The industry is also notable as our Nation's largest and most important sector of small manufacturers.

I would point out most of these plants average about 20 employees and obviously would not be in a position to withstand the kind of challenge we would expect from the foreign trade markets. We

feel that if the manufacturing clause is allowed to expire, the employment effect would be devastating.

It has been pointed out the U.S Department of Labor study anticipated a total of 367,000 jobs throughout our economy if the manufacturing clause expires. That was at a time when hundreds of thousands of jobs are already being lost in many of our most basic industries, certainly we cannot allow yet another American industry to be victimized by our rising trade deficit.

We think the technology in the printing industry is advanced significantly to allow increased mobility for foreign printers and for our Nation's largest printers, but while printing companies are increasingly mobile, American printing workers cannot follow the jobs to low-wage plants in the Pacific or the Caribbean Basins. Clearly if the manufacturing clause is allowed to expire, we feel many hard-working men and women will once again have to pay the heaviest price.

I know the previous speaker this morning said that regardless of the job loss, it has been legislation. Certainly the record is clear how many people have suffered because of those attitudes, and we don't want to see our industry added to that.

Mr. Chairman, I am surprised that the Department of Labor is not here to discuss their flawed 1986 study which is quoted so often by other members of the administration.

The study purposefully chooses the most limited scenarios of job opportunity losses, almost totally ignores indirect job loss impacts, ignores the experience of increased printing imports from Canada, which is currently exempt from the manufacturing clause, ignores the potential loss of jobs to Mexico, and makes no effort to estimate that impact on investments in plant and equipment which would likely occur if the manufacturing clause were terminated.

We had discussions this morning about the shipment overseas of paper and materials, certainly Mexico, the Caribbean Basin would be a factor too. The 1986 DOL study is so riddled with errors and misrepresentations that the analysis is worthless as a predictive tool. I suggest, Mr. Chairman, that you go to the printers in your own district and districts throughout the country. They will tell you what the loss of the manufacturing clause will mean far better than any economist.

The administration has also been raising concerns, they have done it extensively this morning about the adverse GATT ruling. It is amazing they sit here and tell us that our hands are dirty. And yet by their own inactions in that body, they are the ones that soiled them, and they use that as a basis for their argument throughout their discussions.

It has been pointed out several times our Trade Representative did not exercise our Nation's right to veto the findings of the panel because the GATT rules by consensus, the United States had the right to veto the GATT rule, panel ruling or to force a negotiated consensus, but by its capitulation, the USTR failed to represent the interests of the United States, as expressed by the Congress in passage of the 1982 extension.

Now, the USTR and other administrative agencies hope the adverse GATT ruling which they have cited this morning and which they cause to occur is reason enough to require the termination of

the manufacturing clause. They warn the U.S. industries will face retaliation if the clause is extended.

Sitting on my right, and certainly he will testify in a few minutes, is a representative of all of our industries in our country, and he would not be here if he thought that was the case. Mr. Prine pointed out that this bill is a far cry from what the original legislation was.

Also, Mr. Chairman, the manufacturing clause is not an impediment to signing the Berne Convention. Mr. Arpad Bogsch, the Executive Director of the World Intellectual Property Organization, which administers the Berne Convention, has stated that the manufacturing clause is probably not an obstacle to signing the Berne Convention. In Senate Judiciary Committee testimony last year, he said that the Berne Convention would not be interested in U.S. internal treatment of its authors and that the clause has only a marginal effect on foreign authors. Clearly the manufacturing clause is not the obstacle to signing the Berne Convention.

As to the effect of the manufacturing clause on the computer industry, in recent months, the computer industry has formed a coalition of business groups opposed to an extension of the manufacturing clause. The coalition argues that the manufacturing clause will hinder future intellectual property negotiations. This claim is made despite the fact that the manufacturing clause does not affect foreign authors and only affects a small segment of the intellectual property field.

Business Week recently published a series of lengthy articles on the "Hollow Corporation", which is causing the deindustrialization of America. Many of the firms which are lobbying against extension of the manufacturing clause are quickly becoming hollow corporations, merely marketers of goods developed and manufactured overseas. Mr. Chairman, allowing the manufacturing clause to expire would only accelerate the hollowing of industrial America. While allowing the manufacturing clause to expire may be profitable for a few individual companies, American industry and American workers will suffer.

As vice president of an industrial union, I have joined in the fight for the survival of many of our Nation's most basic industries. One industry after another has been targeted and then destroyed by foreign manufacturers. The combination of unfair trade practices and the overvalued dollar has deprived millions of working men and women and their families of their livelihoods.

In the discussions this morning, it was pointed out the printing industry is a healthy industry. I got the feeling in listening to those comments, you are almost tainted as an industry if you are in good shape, and the discussion of open caskets is really kind of a chilling reference by the administration to some of our industries, and working closely with people day in and day out and telling people who lose their jobs because of our trade practices is a very chilling experience too. As I say, it really makes you sit up and listen.

As has been pointed out before by I think Mr. Prine, there is no reason to make a unilateral trade concession. This administration does not prepare for nuclear arms negotiations by scrapping weapons programs, and they shouldn't do the same thing about our trade laws.

Mr. Chairman, I am convinced that allowing the manufacturing clause to expire would be a grave mistake. That would open the way for the destruction of our successful printing industry. And I say that again, successful printing industry. The price for allowing the manufacturing clause to expire would be hundreds of thousands of U.S. jobs and hundreds of stricken communities. The price is simply not worth it. I, therefore, urge Congress to pass H.R. 4696 and retain the manufacturing clause of the Copyright Act.

Thank you.

Chairman GIBBONS. Thank you.

Mr. Samuel, we are glad to have you here.

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO

[The prepared statement begins at p. 95.]

Mr. SAMUEL. If I may submit my testimony for the record.

Chairman GIBBONS. Certainly.

Mr. SAMUEL. It seems to me, it must appear more to the members of the committee, there are only so many issues that can be dealt with, and there is no reason for me to add again to the discussion of the issues or for you to hear it.

Chairman GIBBONS. Without objection, your statement and all other statements today will be entered in the record.

Mr. SAMUEL. Then I can deal briefly with one or two matters which have not been raised in more general terms.

I am Howard D. Samuel, president of the Industrial Union Department of the AFL-CIO. I am testifying in general today on behalf of the 5 million Industrial Union Department members of the AFL-CIO and, in particular, on behalf of the graphic arts and printing unions affiliated with the AFL-CIO, which represent more than 400,000 members throughout the United States and Canada.

We urge this subcommittee to support H.R. 4696, which will permit Congress to avoid the mistake of allowing the manufacturing clause of the Copyright Act to expire on July 1, 1986.

The new approach embodied in H.R. 4696 assures not only the continued health and vitality of our domestic printing industry, but also establishes a unique mechanism to recognize and reward our true fair trading partners.

In connection with the issue of retaliation, let me simply raise the fact that as president of the Industrial Union Department, I must represent not only the workers of the printing industry, but also those in such industries as auto, steel, electronics, the textile and apparel areas, and chemicals.

If I had any question in my mind that continuing the clause would lead to retaliation which would cause job loss or production declines in any industry at all, I certainly wouldn't be very quick to appear before this panel on behalf of this bill. I do not have any such doubts.

The specter of retaliation is frequently raised by those who are opposed to fair trade as a means of trying to prevent the United States from taking any steps whatsoever. It seems to me this is a specter which has very rarely appeared in the past and the likelihood of it taking place today, when we suffer from a trade imbal-

ance of almost $150 billion, an embarrassment to the entire trading world, including GATT, is minimal. It seems to me any likelihood of any country taking advantage of us by worsening that trade deficit is practically nil.

The Industrial Union Department has been gratified to work closely with you and your colleagues on this committee in developing a new approach, new legislation to deal with the massive impact of international trade on our Nation's welfare. All of us had moved away from an innocent dependence on the principles of unalloyed free trade, and realized that U.S. trading rules must recognize that our competitors do not hesitate to utilize the full resources of government to help them win markets, whether or not they are in conformity with recognized international rules.

It seems to me the facts of international trade in the printing industry follow much the same pattern as those in most other industries. Our foreign competitors will not hesitate to use all available resources, including practices which we regard as illegal and unfair, to establish themselves in our market. H.R. 4696, by providing exemptions for those countries who play by the same rules as we do, follows the basic principles incorporated in H.R. 4800, the Trade Policy Reform Act of 1986, which passed the House with overwhelming bipartisan support last month, reflecting this body's determination to provide a level playing field for U.S. industries and U.S. workers.

I strongly urge this committee to support this bill in the knowledge it reflects the same principles, the same determination and the same purpose.

Thank you.

Chairman GIBBONS. Thank you.

Mr. Frenzel.

Mr. FRENZEL. Mr. Prine, you indicated that the testimony of the Secretary of Commerce and the USTR was irrelevant. Can you tell me in what respects you think it is irrelevant?

Mr. PRINE. Yes; I certainly can. First of all, all this talk about protectionism and infant industry, as I said, is irrelevant because this is not a protectionist bill. It is in no way even similar to the previous manufacturing clause. It actually provides for a phasing out of the clause. And so instead of being protectionist, it is designed just the opposite, to promote free trade. So all the talk about protectionism is irrelevant.

Mr. FRENZEL. Thank you.

Mr. PRINE. I think the point on Berne has been covered. Either the Secretary or the Ambassador painted this as an obstruction to Berne. It is not, in our view.

And, finally, all of the talk of GATT illegality. No. 1, the mishandling of this case is monumental. And the USTR created this situation. Even more important than that, GATT retaliation has to be based on damage, and we expect the European Community countries would gain almost immediate certification. All the talk about GATT illegality and retaliation is irrelevant.

Mr. FRENZEL. They got it all wrong, they don't understand the problem.

You also indicated that the problem in your industry was going to be job loss. And they indicated there is going to be more jobs lost

as a result of passage of this bill. Your attitude is to "Pull up the gang plank, I am on board."

Mr. PRINE. We are quite willing to sail the international free trade waters. We want docking privileges to go in and sell in these other countries. Yes, I think there will be a net job loss with this bill, beyond any question. But at least we will have the opportunity to offset that job loss by selling in these other countries.

Mr. FRENZEL. Their reference to a job loss was a different situation, they are talking about jobs lost through retaliation, which would be larger than yours. You indicated this was a wonderful bargaining chip, both of them stated repeatedly we get nothing for it, it was no quid pro quo to anything, so that is simply a basic disagreement between you and they.

Mr. PRINE. Yes. Although I will add this, their position is disproved by the history of the last 10 years. Mine is not subject to that frailty.

Mr. COOPER. If I may, I am Ben Cooper, with Printing Industries of America.

Mr. FRENZEL. He is legitimate.

Mr. COOPER. I am legitimate. Over the past 10 years, we have had one success in negotiations in any trade barrier, tariff or otherwise. That was a negotiation made between the U.S. printing and publishing industry and the Canadian printing and publishing industry over lowering tariffs in books, periodicals, and other items. They lowered that tariff in response to our assurance we would remove the effective manufacturing clause for them.

We took that agreement back to our governments and got that tariff lowered. We find even today, as Canada—the Canadian Government has reimposed that tariff. They have not only upset our printing industry, but the Canadian printing industry. The industries, by virtue of using the manufacturing clause, which is as important to Canada as it is to us, have been able to negotiate lower tariffs, and they are willing to do so again. We can't get our governments to go along with us.

Mr. FRENZEL. Thank you very much.

Two of you, Mr. Prine and Mr. Greer, indicated that this very large industry composed of many plants, average size of 20 employees, would be aggrieved if the clause expired. I understand that on the other hand there are only 44,000 employees in the book publishing business, that they are rather large institutions. Would either of you comment on that?

Mr. PRINE. That is true of books. You can give the total printing industry——

Mr. COOPER. The total printing industry is about 1.3 million. The bulk of that is printing and publishing combined. We are separate industries, although part of the same statistical gathering pool.

We have run into a curious situation with the administration because they speak of the printing industry as a very healthy industry. In doing so, they use the entire industry. Yet when they discuss the job loss impact, they only focus on the one.

So one place or the other, we are going to have to start talking about the same numbers. We believe the long-term impact is not going to be on those large companies but fall most heavily on the

middle companies, which are the most highly competitive and which have the least latitude.

Mr. FRENZEL. Mr. Greer.

Mr. GREER. Yes. I think Ben makes a good point about the overall industry. They singled out only the book industry. I point out, too, Mr. Congressman, a large portion of that segment of the industry are people who are unskilled. If there was dislocation, they would be hard pressed to find it on the job in the printing industry.

Mr. FRENZEL. Maybe I have got it wrong. I thought the manufacturing clause defended our shores from the corruption of foreign book publishers, and that we weren't talking about unskilled people, we were talking about pretty good sized companies who were printing our books in America. Explain to me how——

Mr. GREER. There are a large number of unskilled people who move materials, who assist on equipment and that kind of thing. If a plant were affected, they would be equally as affected as the skilled people.

Mr. FRENZEL. We still got—you don't dispute there are 44,000 employees in book publishing and that they are in relatively large firms, no 20-person firms, publishing books?

Mr. COOPER. Mr. Frenzel, I think we are having some problems. There is a distinction. Are you referring to book printing?

Mr. FRENZEL. Yes.

Mr. COOPER. Book publishing—McGraw-Hill is a book publisher—so there is a distinction between the two. The size of the book industry, those figures are roughly correct, although there are a number of companies which print books that may not print books as a predominance.

One of the major book printers in this country, 20 percent of their total volume is in book printing. So they may not be classified as a book printer by some standards because it is not over 50 percent of their product. Nevertheless that company, if it lost 20 percent of its market or 15 percent of their market, would be substantially affected.

So the numbers are a little bit difficult to compare because book printing is not as specialized within some companies and spread out with others.

Mr. FRENZEL. I will tell you what, Mr. Cooper. Perhaps you could prepare a short monograph, just a page or two for the committee, that would detail your expectations of the kinds and size of companies that would likely lose job opportunities.

Mr. COOPER. I will be happy to.

Mr. FRENZEL. Everybody comes in here and talks about the poor little printer down the street, and the poor little printer down the street in my town isn't printing any of this stuff, so it is a little hard for me to relate job loss with the screams of pain from the people who are representing the industry that claims it is going to be hurt.

Mr. Greer, you indicated the 1986 DOL study was no good.

Mr. GREER. Yes.

Mr. FRENZEL. The two previous witnesses indicated that that study was pretty well corroborated by an ITC study and the CRS study. Would you comment on that, please?

Mr. GREER. Yes. The DOL study, Mr. Congressman, I think was the second of those. They studied only a very small segment of the industry. In fact, I met with those people when the study came out and voiced my concerns that the study would be used. In fact, it is being demonstrated here this morning and has in other places a kind of a cornerstone of arguments of the administration why this clause should be allowed to expire.

The fact of the matter is that that study was underway for a long time and the people who were making that study evidently couldn't get the numbers down to where they could be usable by the administration. Those people were taken off of that case, moved to some other department, and the new people brought in at the last minute. These people looked at a very small segment of our industry, came out with these numbers, in the meantime did not contact us who were the largest union in the printing industry or to my knowledge, the Printing Industries of America, who would have a tremendous wealth of information about our industry.

None of us were contacted. They just simply took a small segment of the industry and drew up these numbers, and we voiced our objections at the time that they put the numbers out.

Mr. FRENZEL. I invited Mr. Cooper to present an estimate. If you would like to do the same.

Mr. GREER. I will be happy to.

[A response appears at p. 117]

Mr. FRENZEL. It would apply equally, but my problem is that I still am not able to understand why you don't think the study should be confined to that segment of the industry which is in the business which we are protecting.

Mr. GREER. Mr. Congressman, all segments of our industry would be impacted by this legislation. It is not just the book publishing industry. It may be, in a list of segments of our industry, which would be impacted the most dramatically, books may be first, but there is a long list of products in the printing industry that would be affected by this. To give you an example of why we show so much concern about this is that the calendar industry, which is by and large not copyrighted, but most of that industry now has moved offshore.

Mr. FRENZEL. Thank you very much.

Mr. Samuel, you said the specter of retaliation was not important because it wasn't going to happen. Did you make the same prediction about the shingle case before the Canadians retaliated?

Mr. SAMUEL. I suggest, Congressman, that the shingle case will be solved without retaliation ever taking effect.

Mr. FRENZEL. It might be.

Mr. SAMUEL. Which has been generally what has happened. I can only suggest to you, Congressman, that the impact of our trade deficit with every sector of the world, LDC countries, non-OPEC LDC's, the European Communities, Japan and so forth, and Canada, of course, is such that there will be very little effort made by our trading partners to make that trade deficit worse.

Mr. FRENZEL. Do you believe that the list that EC has given us is a fake and is intended only for bargaining purposes?

Mr. SAMUEL. Yes. I would add, if I could, Congressman, that the record of the recent administrations, including, I regret to say, one

I served in under President Carter, in achieving our trading goals through negotiation, has been so bad that I think that was one of the main impetuses behind the passage of H.R. 4800 by this body just a few months ago.

Mr. FRENZEL. Thank you very much.

Mr. Chairman, I yield the balance of my time.

Chairman GIBBONS. Fine.

Mr. Pease.

Mr. PEASE. Mr. Chairman, I don't have very much. I would like to thank all three witnesses for their excellent testimony. I would like to ask Mr. Prine a question. Mr. Prine, you quoted various tariffs imposed by the Canadians on different kinds of products. I wasn't sure whether the tariffs you were mentioning were on products that are subject to the manufacturing clause or whether they were on other printed goods that would not be subject to the manufacturing clause.

Could you enlighten me on that?

Mr. PRINE. I would think—I am not a copyright expert, Congressman—most of those materials would be subject to copyright.

Mr. PEASE. You mentioned advertising.

Mr. PRINE. One of the ones with which I am most familiar is this abominable tariff on catalogs, and here again, the record of our Government is simply terrible. They entered into negotiations, I think it was the Tokyo round, that called for reduction of the catalog tariff which started at 25 percent.

They were going to get it down to 21 percent, but somewhere in those negotiations the Canadians got a clause in that said that since it would be applied against transactional rather than fair market value, they would have the right to make an adjustment, and so all of a sudden this tariff which was going to come from 25 down to 21 percent, something like that, suddenly shot up to 30.5 percent, and I submit to you if you have got salesmen trying to sell against a 30-percent tariff, you are in trouble, and that is actually what has happened is the thing has really gone up.

Now, it is on a different base, but it is actually up.

Mr. PEASE. Are catalogs covered by the manufacturing clause?

Mr. PRINE. Most of them, I think, are copyrighted and, therefore, would be, yes.

Mr. COOPER. Mr. Pease, the coverage of the manufacturing clause, the phrase is "preponderantly nondramatic literature material in the English language by an American author."

That basically means anything that is more words than pictures copyrighted by an American author in the English language is subject to the manufacturing clause.

We referred the books here because books is the most identifiable and largest single category but any product fitting that category is subject to the manufacturing clause.

Mr. PEASE. Now, the magazines, Mr. Prine mentioned advertisements and that sort of thing, those magazines would be subject to——

Mr. PRINE. Magazines, definitely, unless it is largely a picture magazine. Here, again, the phrase that Ben quotes, or Mr. Cooper quotes, "preponderantly nondramatic literature material in the English language by an American author," they are all these con-

ditions and so forth, but if it is primarily literature rather than pictures, I would say yes.

Mr. COOPER. Telephone books would be something that would be covered despite the fact that someone might challenge their literary merit. A telephone book is more words than pictures.

Mr. PEASE. I find it fascinating reading it by the page.

Mr. PRINE. Thank you. They are well printed.

Mr. PEASE. Well printed in my district, I might add.

Mr. Prine, does R.R. Donnelley Co. print overseas anyplace except England?

Mr. PRINE. Except for some satellite transmission operations in Singapore now being extended into Japan, the answer to that would be no, not at this time.

Mr. PEASE. Do you print overseas anywhere to ship the product back into the U.S. market?

Mr. PRINE. Some in England. I don't think there is a great deal. I can't give you a number, but not a great deal.

Mr. PEASE. Would it be roughly 10 or 20 percent of the product?

Mr. PRINE. No. It would not be that large.

Mr. PEASE. Not that high?

Mr. PRINE. No. We print telephone books, to come back to your example, Congressman, in Gateshead, England, but for the English telecommunications industry, and we do magazines and catalog work in a couple of locations over there.

Mr. PEASE. What will happen if the manufacturing clause expires? Is there any thought on your part of setting up shop in Taiwan or Korea or someplace? Singapore?

Mr. PRINE. Yes. We have had people over there. I think, to give you the most likely scenario in our view, is that the Japanese, and perhaps others, and it might include some U.S. companies if this happens, are going to set up long-run production facilities in the Far East.

The Japanese are the most likely candidate. The equipment is more or less off the shelf. They know how to manufacture. They know how to market, and they have a history of going to the low wage rate country, and that is the largest threat I think, and I might add that that is one reason why it has been so difficult for all these economists to come up with a job loss number. I don't think they know.

I have gotten impatient reading those studies, and the reason is that they look at cost and pricing levels today that exist in the Far East, and those really mean very little, because you do not have long-run production facilities there in general, and what you have to do is say, well, when the Japanese or whoever sets those up, then what will cost in pricing levels be, and you don't know, so guessing at what that job loss figure is going to be is very difficult.

All I will say is that if we were not convinced it would be very substantial, I wouldn't be here. I wouldn't be spending this amount of time on this issue.

Mr. PEASE. You certainly have seen enough examples in other industries where multinational corporations have set up shop in Singapore, Taiwan, Korea, whatever.

When we are talking about job loss then, it is not only the potential of a major loss because of competition from foreign competi-

tors. The possibility exists, indeed, maybe the probability that companies like your own would feel it necessary to phase down U.S. plants and initiate plants overseas to ship the product back here; is that right?

Mr. PRINE. That threat exists. We do not want to do that. I think I say in my testimony we don't want to do that.

We are prepared to do it if we are forced to, and if it comes out that way, but we do not want to do that. I have spent a long time trying not to do that.

Mr. PEASE. Just out of curiosity, do you have any plants in Mexico?

Mr. PRINE. No.

Mr. PEASE. I would just like to comment finally on a point that you made which I think is very important, and that is protectionism. If this clause expires, then the only contribution to free trade will be on the part of the United States.

It will open up the U.S. markets, but you see no evidence whatsoever that any other country will change its own protectionist patterns.

Mr. PRINE. I certainly do not. They have a history of saying "thank you". They throw large dinners and welcome our trade negotiators, and they have pleasant exchanges, but the record is there. They do nothing.

Mr. PEASE. So you would see this as a unilateral opening up of our market without any other change in restrictive practices anywhere else in the world.

Mr. PRINE. That is exactly what has happened for 10 years. If you believe in history as a prolog, that is it.

Mr. COOPER. Mr. Pease, if I could add one point. I think it is important to recognize the importance, the fact that the United States is the world market for printing. There is a market certainly in Europe, but the United States so predominates that market that we are not so much talking about our access to markets. We are not going to gain a lot if Taiwan is opened up.

We are not going to send a lot of printing into Taiwan, but we will lose a lot because we are the market.

Our one market opportunity, frankly, is Canada, and the door is shut, so that is the one real export chance we have over approximately half of our exports and imports with Canada.

I wanted to make that point before we get over that.

Mr. PEASE. That is an intriguing comment. I think the premise of this bill is that if countries meet the conditions in the bill, they are exempt from the manufacturing clause, and one of those conditions is that they open up their markets to our printed products, but you tell me they don't have any markets to speak of.

Mr. COOPER. There is a two-pronged attack in this bill. One is that they clean up their piracy. It is our hope that if they simply quit pirating our goods, that there is a half billion or more market that we may regain.

Certainly we won't regain all of it.

The second prong is those countries where we do wish to trade or where export opportunities should exist do not provide those opportunities now to the degree that we think they should.

Canada, as the Commerce Department said, there is a potential of $350 million in exports there. We would like to have it. For Canada, the manufacturing clause exemption represents their largest single export item for printed material. Anyone who says that this issue is not important to them has not studied their export markets, because they need this book export market, so we want to hold that out to them as a lever to get some of the markets for our team up there.

Mr. PEASE. Thank you very much.

Chairman GIBBONS. Mr. Russo.

Mr. RUSSO. Mr. Chairman, thank you.

Let me just say before I ask questions that I want to thank the gentleman for making such an excellent case for the manufacturing clause.

As a cosponsor of this legislation, I appreciate you destroying every myth disseminated in previous comments by the Secretary and USTR.

I have a reputation as not being much of a free trader, because I believe in being a fair trader. Free trade has existed in America, and we have gone from a surplus to deficit of $150 billion, so the success of a one-sided free trade operation has damaged this country significantly.

We have ignored history completely. We have exempted Canada from the manufacturing clause only to find out that they take advantage of us and hurt our industry. But that is not enough.

It shouldn't matter that we take an exemption and history shows what happens. We describe logically what is going on and we ignore it. But what disturbs me now is we have a whole new philosophy of how to deal with trade matters.

We no longer do much to help weak industries, because we say they are lost, that there is no way to regain the steel market that we have experienced irreversible harm in autos, so there is not much we can do.

Now, we have a new philosophy. Let's cripple good industries. Let's figure out a way we can weaken industries that are successful, because we have done all the damage that we could to those that are weak. Now let's use free trade to destroy successful industries.

I hope that philosophy doesn't prevail in the Congress.

I hope we act wisely and don't totally ignore what is going on in the world. I appreciate an industry coming in ahead of time saying we are successful, we are doing well. Don't do to us what has been done in the past, our government not helping its industries, its constituents. I am always intrigued by how much people in other countries will retaliate.

How can they retaliate against us? They are already beating us by $150 billion a year. How much more can they squeeze out of our markets?

What I would like to ask, Mr. Prine, is if you would explain the Florence agreement?

Mr. PRINE. I am not a great authority on it, Congressman, but basically, as I understand it, the important features as far as our industry is concerned is there is a provision in there that the signatories to the Florence agreement commit themselves not to have

any duties and tariffs on educational, scientific, and cultural materials, so any printing—most books are regarded as cultural, and educational, and so a lot of printing falls under that.

What Canada did, that I resent so much—in my testimony you have reference to the Toronto agreement, which I signed on behalf of the Printing Industries of America some 20 years ago, and our Canadian counterparts agreed to push their Government to adhere to the Florence agreement.

Canada instead of doing that, which would have committed them to take off these tariffs on books, instead they put in a zero duty order, so they kept the authority unto themselves to reinstate it, which they just did a few weeks ago.

I hope I have answered your question in general. That is basically what the Florence agreement does.

Mr. RUSSO. I think one of the myths we need to destroy, and I think you've done it effectively, and I think Mr. Pease has followed up well, is that this is not the old manufacturing clause that existed in 1891. We have made some changes in the process of trying to deal with the GATT problem we have. Haven't we exempted one country, Canada, from the manufacturing clause?

Mr. PRINE. That is correct.

Mr. RUSSO. And hasn't Canada done an absolutely miserable job in making its markets available to us?

Mr. PRINE. It made it worse.

Mr. RUSSO. Let me just ask you one other question, and I would appreciate as brief a response as possible.

What happened with the GATT ruling?

You said it was totally mismanaged.

Mr. PRINE. Some of this is subjective, and I mention that to start. I will make it very brief.

For many, many years it has been almost an emotional issue in my view over at the STR, and when this GATT case was brought, I went over to the STR and I found that the person who was in charge of defending the case is the person who for many years has led the fight to get rid of it, and so we have a classic case here of putting the fox in charge of the hen house.

Mr. RUSSO. That is like arms control. The administration has placed someone who doesn't like arms control at the head of the negotiating team.

Mr. PRINE. The industry offered to help in preparing that defense. Our offer was rejected. Not only that, while I was there, the individual with whom I talked pointed rather airily to a computer terminal screen that was there, and said, "Anyway, you are trying to protect a dying industry."

Pretty soon, all this stuff is going to be on computers and readouts and so on. I don't know how those people are going to take those terminals on to airplanes to read them.

What I am saying is they put it in the hands of somebody who was totally antagonistic to the clause. We don't think they did a good job, and then just to cap it, they refused to exercise the power of veto which they had.

I may say that our European countries, when they have had GATT panel findings adverse to their interests, have been willing to rise above principle and to veto those panel findings.

We have simply a classic case where once again, those countries are playing hard ball while we are trying to be gentlemanly about the whole thing.

Mr. RUSSO. I thank the gentleman. I just want to respond to one comment that my good friend from Minnesota made about why you felt the comments of the two gentlemen were irrelevant. After you gave your description, he said, "I guess they are all wrong."

My only response is to suggest examining their record. Show me one thing that they have done in the last 25 years that justifies the removal of the manufacturing clause.

I don't know of one thing they have done, to remove overseas trade barriers and so I would say, yes, they do have it all wrong, and if we allow this kind of policy to proceed, some day we won't have any industries in this country.

All we will have is a service-oriented economy run by foreign countries, and that is not something I want to sit in Congress and preside over.

I certainly hope that if we are not successful in this subcommittee—you know I am a realist, I understand where the votes are—maybe somewhere in some other way we will be able to bring pressure and pass this legislation. I must say that I want to thank the chairman of the subcommittee, who I know has a very difficult problem with this particular clause, for giving us the opportunity to have these hearings.

I know it didn't come easy, and I appreciate the fact that he extended me this courtesy.

Mr. PRINE. Could I make a personal point very quickly? In expressing my disagreement with the Secretary and the Ambassador, there is nothing personal in that at all. I know both of them personally. I have a very, very high regard for both of them personally, as able men of integrity.

We have a sharp disagreement on this issue.

Mr. FRENZEL. If the gentleman will yield?

Mr. RUSSO. I certainly will yield.

Mr. FRENZEL. I didn't want to put the gentleman on a personal basis. I know he respects their opinions in all other respects.

Mr. RUSSO. Very highly.

Mr. PEASE. Would the gentleman yield?

Mr. RUSSO. I yield to the gentleman from Ohio.

Mr. FRENZEL. If the gentleman will yield further, you are making this little speech like you are going to have to go someplace. I want to assure you the hearing is only getting started. The good part is yet to come.

Mr. RUSSO. I certainly would love to stay, and I will do the best I can, but I do have a 12:30 conference on the budget. That is part of my problem. I yield to the gentleman from Ohio.

Mr. PEASE. I thank the gentleman for yielding.

Mr. Prine, I think you were in the room before when I was questioning the Secretary and the Ambassador about the remedies available to the industry, if this clause expires, and a country elsewhere starts subsidizing printing coming into this country. How much confidence do you have that you would get adequate protection, given the current trade laws and the administration of those laws by the current administration?

Mr. PRINE. I am going to let Mr. Cooper respond to that. I will say one problem I have with a lot of these remedies is it is sort of like prescribing medicine after the patient is dead, but I will let Ben respond to that.

Mr. COOPER. Obviously, this particular law has an expiration date of June 30. We can read calendars as well as most folks, and we see that this thing is beginning to run into some time difficulty.

Obviously, we are looking in the event this thing is not renewed in some orderly fashion, we are looking at alternatives, we retained counsel, I think a very competent trade counsel to advise us on other alternatives.

They have recommended on the 301 effort, initially recommended against it, because of the cost. He said he couldn't in good faith recommend that we spend in his estimation anywhere from a quarter to three-quarters of a million dollars to file the case, because one of the problems he saw with it, and I am no trade expert, believe me, and that is why we hired someone who is, that this 301 process ends up before the GATT.

Those people aren't apt to help us, I don't think, so we are not looking at any favorable treatment before the GATT through the 301 case, and when I go back to my industry, and say would you be willing to spend a quarter to three-quarters of a million dollars to take a case that ends up before GATT, after they say "GATT who?", then they are going to say, "No, we are not."

We have also sought informal means, and the informal means simply have just not panned out.

I might also say this legislation that we are dealing with today was drafted by initially, the initial framework was drafted by the same counsel who came out of this administration, USTR.

The first place this bill went was to the USTR. We knew they were opposed, and we said here is what we would like to achieve, is there something we can do to make this thing workable? The answer was "No."

I won't drag this saga out too long, but we have been meeting obstacle after obstacle in getting ourselves heard before the administration, and in a senior policy type way where they would say yes, we will do something for you.

Parenthetical to this, earlier this year, roughly March, when the bilateral negotiations were getting approved and getting underway, I discussed the issue with an individual with the USTR, and I said, are we going to be part of the bilateral negotiations.

He said, "Are you kidding? With all this emphasis on the manufacturing laws, do you think we wouldn't consider you?" That to me is leverage. You get leverage before a lot of people and we need it with our own Government.

We are putting our eggs in this basket now. If it doesn't succeed, we are going to seek other means, but we are not optimistic.

Mr. PEASE. Thank you.

I thank the gentleman for yielding.

Mr. FRENZEL. Would you yield?

Do you have another question?

Mr. PEASE. No.

Mr. FRENZEL. One of you, and I think it was you, Mr. Cooper, suggested that there is only one market that is of interest, and that is Canada; is that correct?

Mr. COOPER. Not only one. The primary market for printing in the world has been for a number of years, and is still today the English language market. That English language market is the United States, Canada, Europe, Australia, New Zealand, the English-speaking countries; increasingly Japan.

Mr. FRENZEL. I assume if you file a 301 case, you are probably filing it in Canada, because that is the market of principal interest?

Mr. COOPER. That would be our first——

Mr. FRENZEL. In which you think you have been aggrieved?

Mr. COOPER. That would be our first effort.

Mr. FRENZEL. Did your counsel suggest that he thought it would be that much to file for one country?

Mr. COOPER. Yes, he did, although we are going to make an effort to do it using as much in-house help as we can, to see if we can do it at a lower rate. The problem we have with Canada, quite frankly, is that Canada last year increased tariffs in the two product areas which we feel we can trade the best, catalogs and advertising, by 50 percent.

Those were GATT legal increases. They increased the tariff on books from zero to 10 percent. That is a GATT legal increase. The GATT has not served us well, so we do not anticipate success in filing a 301 that is going to address GATT legal increases.

We are going to do it regardless, because it is our only avenue, if this expired.

Mr. FRENZEL. Thank you.

Chairman GIBBONS. Thank you all very much. Before you leave, let me say I had planned to run straight through, but it looks like to me now we are going to have to take a little break because we have got to go over and vote.

Let me ask Mr. Frenzel and Mr. Pease, and I know what your problem is, Mr. Pease, when would you like to come back?

Mr. FRENZEL. Right now.

Chairman GIBBONS. I have got a 2 o'clock testimony before the Senate. I would like to come back right now, if it is possible.

All right, we will come right back.

[Recess.]

Chairman GIBBONS. Let's reconvene.

I apologize for taking longer than I thought.

Our next panel is composed of: Time Inc., Mr. Reginald Brack, Jr.; Association of American University Presses, Mr. John Gallman; and Simon & Schuster Publishing Division, Mr. Lawrence Levinson.

Mr. Brack.

STATEMENT OF REGINALD K. BRACK, JR., GROUP VICE PRESIDENT/BOOKS GROUP, TIME INC.

[The prepared statement begins at p. 99.]

Mr. BRACK. Thank you, Mr. Chairman.

I am group vice president of Time Inc., and president and chief executive officer of the books group of Time Inc.

Our book publishing group includes Time-Life Books, Book-of-the-Month Club, Little, Brown & Co., and Oxmoor House. We are also the Nation's largest publisher of magazines.

I should point out that the issue before us today is really a book publishing issue and has little or nothing to do with magazines, and it is a copyright issue that has everything to do with the citizenship of authors and where they can be printed.

I am pleased to have the opportunity to present to you, Mr. Chairman, and your colleagues, Time Inc.'s views on the manufacturing clause of the Copyright Act. Time Inc. believes that the manufacturing clause is irrelevant to decisions about where to print books and printing in general, and agrees with other earlier testimony that perhaps it is time to let the manufacturing clause become part of our history.

Time Inc. opposes the manufacturing clause for a variety of reasons, but not the one that motivates American printers and their unions to oppose expiration. Our friends in the printing industry will not lose substantial amounts of business if the manufacturing clause expires, for reasons that I will explain shortly.

Our business reasons for opposing extension of the manufacturing clause are: It impedes the efforts of the United States to expand and enforce copyrights around the world; is a substantial part of the justification by the Canadians for the reimposition of their 10 percent tariff on books, which indeed is retaliation for protectionism, as well as a major irritant to smooth free trade negotiations, in general.

Let me comment on Canada, in particular, in that I believe there perhaps is some confusion there about some of the discriminatory practices that affect our magazines and books. For example, higher postal rates for foreign magazines, content and ownership of magazines in Canada, which are covered under Canadian bill C-58, are culturally related and not trade issues; they will not go away if the manufacturing clause is extended or amended.

The multinational nature of all of our businesses, including books, has long demonstrated to Time Inc. that free trade is essential to a healthy world and American economy. These are not platitudes; these are harsh realities in terms of jobs.

Right now, for example, exports of our books have declined quite sharply because of protectionist measures that have been enacted, and the reason simply is people cannot afford our books any longer. This decline in exports for one of our companies—that is, one of our major international entities—has already caused a loss of jobs here in the United States. These jobs are probably lost forever.

We also oppose the extension of the manufacturing clause because we believe it is not in the public interest. As has already been stated, the manufacturing clause has formally been declared in violation of the General Agreement on Tariffs and Trade. Violation of the GATT by the United States has provoked a serious and credible threat of retaliation from the European Community that could cost $300 million to $500 million in lost exports. That affects our business, for such things as subscriptions and advertising sales

would cause more lost jobs in nonrelated printing industries and perhaps affect printers, as well.

As a result, there would be a much more serious loss of jobs than anything suggested by the printing industry if, indeed, there were retaliation.

The printers and their unions have argued the expiration of the manufacturing clause will cause them a loss of business and jobs. We, at Time Inc., sympathize with our many friends in the printing industry and wish them no cost in terms of either jobs or business. Any potential job loss or business loss must be weighed against that other loss or potential loss of jobs in business that would result from retaliation.

We believe American printers are a strong and vital industry today, one that, because of its quality and reliability and proximity to its customers, no longer needs protection. After 95 years, it is indeed no longer a vulnerable infant industry; it can stand on its own two feet, as it does every day.

But let me emphasize, we believe our printers should be playing on a level playing field. Although the extension of the manufacturing clause or modification will not solve the trade issues, we believe the United States should take steps under existing law, the Trade Act of 1974, to remove barriers wherever they exist to free and fair trade in printing.

We are also sympathetic with the plight of authors in general—and let me reiterate that indeed this is an issue about the citizenship of authors and where they can be printed—and particularly authors that we publish, like William Shirer, Herman Wouk, Arthur Schlesinger, and Henry Kissinger, along with many other perhaps lesser known but equally hurt. These authors, Americans all, are discriminated against by U.S. domestic law, a result that would be laughable if it were not so serious.

The copyrights of American authors should not be held hostage to a matter that is simply and directly one of trade. It has no business being in the Copyright Act.

Important as the preceding reasons are, quite frankly, to us, the most telling reason for eliminating the manufacturing clause or letting it expire is that it is simply irrelevant to basic business decisions on the printing of books and printing of many things in general. Market realities determine where books and magazines are printed, and it is market realities that demonstrate why the concerns of our friends in the printing industry are so misplaced.

I might point out, regardless of what the accurate number of jobs is in the printing industry, the largest single number have to be jobs related to the printing of newspapers and magazines. I would seriously wonder if it is really practical to see a day when the Washington Post or the domestic issue of Time magazine could be printed in Taiwan.

The overriding factors in Time Inc.'s decision on where to print books have to do with the inventory and warehousing of those books. We must be prepared to respond to volatile demand for our books to replenish that inventory at relatively short notice. We cannot afford to produce and warehouse a large supply of books on a gamble that demand will always peak. It sometimes does not; and I will give you some examples.

No company's balance sheet—certainly not ours—can sustain that kind of gross overplanning. This requires that our printing remain in the United States. Let me be more specific about that.

It takes approximately 4 weeks to manufacture an average run for us of some 25,000 or 30,000 books. Because of their locations, our American printers can, with virtually no transportation time, get these books to our distribution points. Moreover, they often enter the books in the mail directly from their plants fresh off the print line.

By contrast, it takes some 6 weeks to transport a shipment of books from Europe or the Far East to the United States.

On top of that 4-week manufacturing time, the difference between 4 and 10 weeks in the availability of books is absolutely crucial. The warehousing and production costs for sufficient books to be printed abroad to overcome the additional 6 weeks' leadtime, again gambling on demand, would simply be prohibitive.

I will give you a current example of the real world. Just 3 weeks ago, a series we recently published under Time/Life Books called "The Epic of Flight," whose primary appeal is to aviation buffs and young people who are interested in fighter pilots, started tripling on us. You might have already guessed the reason is, of course, the incredible box office success of "Top Gun." Now, if it took us 10 weeks to respond to that demand, obviously we could not satisfy the needs of our customers.

Inventory and warehousing are not the only reasons why our books are and will continue to be made in the USA. Our American printers, such as R.R. Donnelley, Arcadia, and Kreuger, and others, have built an enviable record of quality and reliability. We trust them. They produce our books well and on time. We work closely with them, and any problems in production can be remedied almost immediately.

The close and longstanding working relationship gives us a certain degree of control that is essential in meeting deadlines, and, of course, the bottom line. Notwithstanding these most fundamental reasons, there are those who argue the cost differential of printing overseas would make it too attractive for American publishers to afford to keep their printing here, especially if it, indeed, were subsidized by foreign governments.

Let us examine the facts of this in publishing terms. The average book published costs approximately $2 to produce in the United States. It is 30 to 50 cents per book less expensive overseas. That 30 to 50 cents is offset in part by freight and handling charges from Europe or Asia of 15 to 20 cents per book. The net savings would be about 25 cents.

Now, for us, extrapolated to the some 600,000 books we would have to print to beat the delivery delay factor, we would save over $150,000. But, weighed against the production of storage costs, we would actually spend another million dollars on that same 600,000.

Moreover, one must factor into this equation the shifting fortunes of the dollar. With the dollar dropping, that 30 to 50 cents per book edge in production to overseas plants is being eroded daily.

Now, the final proof that jobs will not be lost is the fact that right now we could print many of our books overseas, but we don't.

The Time Inc. Books Group prints the works of many foreign authors exempt from the requirements of the manufacturing claim. Little, Brown & Co. has published all of the works of John Fowles, including "The Magus" and "The Collector," and has published a new book by Robert Lacey on Henry Ford, "The Men and The Machine."

Both authors are English; yet, all of those books are printed here. The same applies to Time/Life Books series.

The manufacturing clause, once again, is simply irrelevant to determining where to print; economic and marketing factors control that determination.

Earlier in the testimony, direct mail and advertising was mentioned. Here again, Time Inc. spends over $100 million a year in the printing and production of direct mail to solicit subscriptions, all of which is printed in the United States. The manufacturing clause would not be made any more relevant were H.R. 4696 to be enacted.

While not as bad as current law, because its certification process could well forestall the impending retaliation, it would have no impact on our business decisions on where to print. Moreover, from the standpoint of public policy, the United States still would be in violation of GATT. American authors still would be discriminated against; and the printing industry still would be receiving protection that, in our view, it no longer needs.

In conclusion, I urge you to closely examine this issue, as you are in this hearing, and explode some of these myths. The manufacturing clause is a dinosaur that once served a worthy purpose: protecting a nascent American printing industry. But, like the dinosaur, it has outlived its time and should follow that dinosaur into extinction.

Chairman GIBBONS. Thank you, Mr. Brack.

Before I ask a question, I am going to hear from the rest of the panel. But I want you to be thinking about this so that you can give me an answer.

I must assume that you and Mr. Prine are in relatively the same business and that you are somewhat competitors, and he sees the problem one way and you see it another. So, you be thinking about that, and maybe you could explain that to me when we come back.

Let's go now to the Association of American University Presses.

STATEMENT OF JOHN GALLMAN, DIRECTOR, INDIANA UNIVERSITY PRESS, AND PRESIDENT, ASSOCIATION OF AMERICAN UNIVERSITY PRESSES

[The prepared statement begins at p. 104.]

Mr. GALLMAN. Thank you for letting us come here. I am John Gallman, director of Indiana University Press, and I am speaking to you today as president of the Association of American University Presses, which is a not-for-profit organization incorporated in the State of New York.

AAUP represents 92 university presses in the United States, Canada, and elsewhere around the world. The majority of our members are in the United States and are distributing throughout this country in the Northeast, the South, the Southwest, the Far

West, and the Midwest. There is hardly a State in which we don't have at least one member. Our parent institutions are public as well as private universities.

The goals of our association are "to encourage the dissemination of the fruits of research and to support university presses in their endeavor to make widely available the best of scholarly knowledge and the most important results of scholarly research."

The members of our association publish over 4,000 books per year, or close to 10 percent of the total number of titles issued in the United States. We also publish numerous scholarly and scientific journals. Our books are specialized in nature, very specialized, in some cases selling fewer than 1,000 copies a year; yet, a high percentage of them are the building blocks of knowledge in the sciences, social sciences, and humanities. Many of these titles require subsidies which we try to obtain from private and public sources, including the Federal Government.

The AAUP is amazed that the manufacturing clause of the Copyright Act (17 U.S.C. 601), which is due to expire on June 30 of this year, is being considered for extension. We are unanimously and unequivocally opposed to this clause. The economic history of this century, including the disastrous depression of the 1930's, has shown that protectionist legislation benefits no one. Legislation which leads to the protection of one industry to the detriment of others in the long term will hurt everyone. Surely, we know by now that competition creates jobs and that protectionism and the loss of competitive edge leads to fewer jobs, recession, and depression.

Our Founding Fathers gave Congress the power to "promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." This statement in the Constitution lays the foundation for the protection of literary properties in our country.

The founders knew that incentives were necessary to authors as well as publishers in order to insure the widest possible distribution of written materials. It was to encourage the free flow of information and ideas that copyright came into existence. From our perspective, as the publishers of all of the major universities in this country, the issue is clearly between the desires of some printers to protect their jobs for a limited period of time as against the needs of authors, readers, publishers, students, and education generally.

Because of the complex and specialized nature of our publications, many of us seek to share costs by copublishing with overseas publishers, usually in England. Frequently, these arrangements are essential to publication. Legislation which stands in the way of importation via copublication of works by American authors will limit the availability of scientific and other material and/or lead to much higher costs. It makes it more difficult for us to do our job. Legislation which prohibits printing in foreign countries of specialized books will deny some of these books to American readers. The manufacturing clause has nothing to do with legitimate issues of copyright and does not belong in our copyright law.

I was going to say something about GATT, in my limited understanding of the various issues involved there, but I am not expert on that and it has been well covered before.

I am surprised in the discussion so far no one has mentioned China. We all like to look at the 1 billion potential readers in China. English is being taught as a second language in China now. There are royalties to be made, licenses to be made, all kinds of arrangements to be made. We should want China to join in the International Copyright Convention along with the United States. I would like the committee to think a little bit about China.

To conclude, the Association of American University Presses sees no advantage in the further extension of the manufacturing clause and many disadvantages. We urge Congress not to extend it.

Thank you.

Chairman GIBBONS. Thank you.

I want to tell you, some members of the committee have thought a lot about China. What a market, potentially.

Mr. Levinson.

STATEMENT OF LAWRENCE E. LEVINSON, EXECUTIVE VICE PRESIDENT, GULF+WESTERN, INC., ON BEHALF OF SIMON & SCHUSTER PUBLISHING

Mr. LEVINSON. Mr. Chairman and members of the subcommittee, I am Lawrence Levinson, executive vice president of Gulf+Western, parent company of Simon & Schuster, Paramount Pictures—the producers of "Top Gun" that Mr. Brack referred to, and the Associates Corp. of North America.

We have published "Lonesome Dove," and two of our current publications, "Necessary Losses" and "The Road Less Traveled," are on the New York Times best seller list.

We believe the manufacturing clause should be permitted to expire permanently. Over the past several weeks, committees of the Congress have heard testimony from Ambassador Yeutter, Secretary Baldrige, and Under Secretary of State Wallis. They have underscored just why, as a matter of fundamental U.S. trade policy, the manufacturing clause should be interred. We endorse those views.

The manufacturing clause is a violation of GATT. It has brought about the imminent danger of retaliation by the EEC against our paper, textile, and chemical industries threatening many jobs in those key sectors. It has contributed to the imposition by the Canadians of a tariff on U.S. books. In fact, the manufacturing clause was specifically cited by Finance Minister Wilson as a reason for the Canadian imposition of the 10 percent tariff on United States books.

The manufacturing clause has clouded our trade picture in another context. Exports of ideas and information are becoming more crucial to our balance of payments. Their continued erosion through piracy and inadequate copyright protection overseas hinders our industry's efforts to contribute to a positive adjustment of the U.S. trade balance.

Yet, developing nations have pointed to the manufacturing clause as a suitable justification for holding back on the enactment

of effective copyright laws and for tolerating piracy—which is costing the U.S. publishing industry and American authors some $2 billion or more yearly in lost sales and royalties, a disgraceful situation.

There is another concern raised by the manufacturing clause. As publishers, we should be free to make our own competitive judgments as to where our books should be manufactured, weighing such factors as overall cost, paper quality, delivery time, and transportation. The expiration of the manufacturing clause will grant that basic commercial right to U.S. publishers.

From our viewpoint, the U.S. printing industry is strong, vibrant, and competitive, with outstanding production efficiencies and technologies. It should have little to fear if the clause is terminated. It is interesting to note that although certain types of books can legally be printed overseas under the current version of the clause, many of these works continue to be manufactured in the U.S. because of superior American printing technology and competitive pricing.

As Senator Mathias summarized the situation:

> The manufacturing clause does not belong in the copyright law. This protectionist provision is inconsistent with our efforts to persuade other nations to lower trade barriers. It undermines our drive to enhance intellectual property standards worldwide. Its very presence in our law invites retaliation.

The wall imposed by the manufacturing clause should finally come down. Its victims are United States authors, United States publishers, and ultimately the American consumer. For all these reasons, we urge your support for its long overdue expiration.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, sir.

Now, Mr. Brack, can you explain to me the difference that you and Mr. Prine have?

Mr. BRACK. Yes, sir.

First of all, Mr. Prine and Time Inc. have a great many interests. However, we are not competitors. R.R. Donnelley is our largest supplier of printing, as we are publishers and not printers ourselves. They are the largest suppliers of the printing of our magazines and books. And I have no quarrel with Mr. Prine's position and desire for a level playing field for the U.S. printing industry.

I do quarrel with the assumption made several times this morning that there is a linkage or a quid pro quo between the manufacturing clause and the removal of other barriers that indeed do affect the printing industry.

I also have no quarrel with much of the other testimony in the respect of competitiveness. However, I do, as a publisher of magazines and books, question again the realistic nature of whether or not we and others would print off-shore if indeed that was as attractive as it was made to sound. With a printing plant in Taiwan, as I mentioned, it would be very unlikely Mr. Prine or any other company could meet the manufacturing and distribution deadlines of the magazines and books that they now print for us here in the United States.

If, indeed, they can, I must admit before this committee I would be interested in hearing what their ideas would be on transportation, because I doubt we could make our schedule on time.

Mr. LEVINSON. I would like to add one other point on the issue of time sensitivity. We also are one of the largest publishers of information, for example on the Tax Reform Act, which you all have been struggling with over the past several months. Getting information out to our vast array of subscribers means virtually overnight delivery service.

One could imagine you are not going to get overnight delivery service under any means of current transportation known to technology if this printing were going on overseas. So, we did at least want to illuminate the fact it takes a while to get things over here.

Someone referred this morning to Japan as a possible source. The Japanese don't have a great source of pulp wood; they probably will have to import paper. By the time these Pacific rim countries do any kind of full-fledged production, they will have to have a source of paper. We have a plentiful resource of paper in the United States. And that may be a factor in inhibiting the establishment of quality manufacturing facilities overseas. The raw stock just may not be available.

Chairman GIBBONS. All right.

Mr. Frenzel; then Mr. Pease.

Mr. FRENZEL. I want to thank the panel for what I thought was excellent testimony.

Mr. Brack, if the manufacturing clause is allowed to expire, you are going to still print your materials in the same places basically?

Mr. BRACK. Yes. At this particular time, we have no reason nor incentive to change that.

Mr. FRENZEL. Do you have a strong need to keep your distribution flexible so you can deliver your books within a very short time frame?

Mr. BRACK. That is correct. And it is also an economic factor so that we don't have to carry a warehouse full of books waiting on the hope that demand may materialize during which we carry an asset that, with today's cost of money, is very, very expensive. It is much cheaper to print additional copies for fast distribution if needed than to carry a warehouse full of books.

Mr. FRENZEL. Are you shipping from your printers' warehouses?

Mr. BRACK. We do both. Our printers ship directly to our customers, in some cases. We also store and warehouse copies that are shipped to our warehouses from printers.

Mr. FRENZEL. I had some difficulty in dealing with the panel because I was groping for who is doing the protected printing.

Are you dealing with a lot of little, tiny printers in publishing your books, or are you doing business with Donnelley?

Mr. BRACK. There is room for lots of confusion on this subject just in terms of who we and others use. As I mentioned, the largest number of people in the printing industry have to be involved in the printing of newspapers throughout the country, and of magazines. Those really are not affected for the reasons——

Mr. FRENZEL. They have nothing to do with this?

Mr. BRACK. They have nothing to do with this issue before us today. We, ourselves, use mostly large printers. However, when you look at the plants in which those large printers print our magazines and books, they in themselves are medium sized installations spread throughout many States of this country.

The smaller shops are local printers who do specialty work for charities, et cetera. It is very unlikely we are going to take our local printing needs, such as wedding invitations, charity brochures, whatever——

Chairman GIBBONS. Political advertising?

Mr. BRACK. Political advertising.

Chairman GIBBONS. Orders from Hong Kong—I can see them getting there by——

Mr. FRENZEL. One of the points you made is that authors will be harmed. Mr. Levinson repeated the same point out of Senator Mathias' mouth.

Can you describe that? I am not sure the committee understands the restriction there.

Mr. BRACK. Right now, the clause, in order to protect copyright, prohibits our printing and importing American authors' material from overseas. That, on a competitive basis, puts them at a disadvantage to foreign authors.

Mr. FRENZEL. I see. So, American authors——

Mr. BRACK. We can print—to my example, we can print John Fowles, who is a prominent British author, anyplace in the world and maintain the copyright protection we enjoy for that material, if it is imported into the United States. However, we would not be able to protect the copyright of any of our prominent American authors on the same basis.

Mr. FRENZEL. On a practical basis, there is nothing to prevent you from publishing abroad.

Mr. BRACK. There is nothing——

Mr. FRENZEL. Except you would lose your copyright protection?

Mr. BRACK. That is correct, which is a big loss.

Mr. FRENZEL. Is that a problem for you, too, Mr. Gallman?

Mr. GALLMAN. I would like to give several answers. Most of our books are very short run books, and on some occasions—I had one just about 2 months ago—I had a book that I had taken 2,000 copies of, copublished with a British publisher. We ran out of stock. I couldn't afford to reprint it. I could have taken more copies from the British publisher, but the author was an American. I am talking very small numbers, 500 books.

Well, that is a small thing unless you happen to be that author and would like to see your book used in certain classes. I dropped that book. It went out of print.

We print most of our books in this country, 98 percent of them. You raised the question about the loss of copyright; I would like to amplify on that.

We are sometimes willing to consider—since our basic purpose in life is missionary, to disseminate knowledge—we sometimes are willing to do certain kinds of books and run the risk of losing copyright. But the problem we face now is that some of the entry ports in some of the Customs houses interpret this law differently. Some ports will let the books in and say you lose copyright; others will impound them.

Now, for a small, weak, struggling university press, a struggle with the Customs office is just more than we can face most of the time. And to some extent, we would be happy to just let all the

books in and forget about copyright. I am now speaking for myself and not the association. However——

Mr. FRENZEL. In your job, however, you fraternize with the authors.

Mr. GALLMAN. Oh, yes.

Mr. FRENZEL. The authors would like not to be protected out of getting their works spread around the world with copyright protection?

Mr. GALLMAN. More of our authors are more interested in the dissemination of their ideas and the fame it will bring them in their professions. Obviously, they would rather have copyright.

When you get to the question of complicated books with a lot of illustrations, it is very hard to copy those books adequately in any case. Obviously, we would much rather have copyright. In a few instances, I know I and some of my colleagues have been willing to take the chance, but what we can't take the chance on is losing the books.

Mr. FRENZEL. Thank you.

I was confused because I didn't see an authors' group in the coalition. I now see the Authors League of America is a member. The coalition would mercifully allow the expiration.

Mr. Levinson, earlier in the program somebody indicated that the administration hadn't done anything for this industry, and in a side conversation with you, you indicated that the industry's most pressing need was to prevent piracy and to get better copyright enforcement.

What is your opinion of what this administration has done to achieve those goals?

Mr. LEVINSON. Within the last year, the responsiveness of Mr. Yeutter and Secretary Baldrige has been exemplary. Contrary to the statements made earlier today that nothing has been done, I think for the first time we are beginning to see some real progress throughout the world in the development of adequate and effective copyright laws, particularly in countries like Singapore—by the way—which have used the manufacturing clause as a specific excuse to kind of go slow.

It is a long-term trend to try and change habits overseas, but at least the trend is in an upward position. Given the circumstances in Singapore and, I believe, Taiwan, possibly in Korea—which, as you know, a section 301 complaint was filed on the intellectual property issue—I can say certainly from our viewpoint there has been positive cooperation. And I think progress is being made, contrary to what was stated earlier today, in terms of a do-nothing attitude, recognizing, at the same time, it is difficult, it is slow, but at least the trend is on the way up.

Mr BRACK. I completely agree. Much progress has been made in the administration's position in just the past year. We have seen some specific examples of it in such countries, as Mr. Levinson mentioned, as Taiwan, Korea, and most recently Singapore.

Mr. FRENZEL. Thank you very much.

Chairman GIBBONS. Don.

Mr. PEASE. Thank you, Mr. Chairman, and gentlemen, thank you for appearing. I was not here for your oral testimony. I am sorry about that. Let me ask just a couple of general questions.

What do you envision would happen with the expiration of this manufacturing clause? If it expires on June 30, a year from now, what will be different from what exists today in your industry?

Mr. BRACK. Well, I think hopefully one of the things that would be different is the fact that we might have made much more progress on other trade-related issues as a result. I would hope for a specific example that if that were to occur, there would no longer be the imposition of a 10-percent tariff on the importation of books into Canada. That would be a specific result.

In respect of the submission that the immediate result would be the loss of U.S. printing jobs, I would be very confident that a year from now that indeed would not have occurred.

Mr. PEASE. Does anybody else have any opinion on that?

Mr. LEVINSON. I don't think, Mr. Pease, that you are going to see a mad rush to knock down the gates of the Far East printing. I think earlier we have stated that much of the printing is time sensitive, that is you have to get material out rather quickly to your subscribers and your customers. There are transportation factors that have to be taken into account. There is also the quality of paper. There is the essence of communicating.

There is the essence of quality control, and some of the proof in the pudding is that under existing law, for example, juvenile books are permitted today to be printed overseas with copyright protection, and yet at the same time certainly there are some juvenile books, in fact numbers of juvenile books printed in the United States, notwithstanding the overseas exemption, for reasons of superior pricing and quality of the U.S. printing industry.

I think what you would see by the expiration of the manufacturing clause is not a full-scale departure that you would fear but rather perhaps a more competitive environment as far as printing is concerned, and I assume that in a free market economy, competition on pricing is a factor that we all should be supportive of.

Mr. BRACK. Could I just amplify on that point?

Mr. GALLMAN. Let me say something about specialized books. I don't think there will be any kind of a rush overseas by University Presses or other specialized publishers to print more books overseas than they are already doing. In many cases the 2,000 copy minimum permitted now is probably enough, and in fact it seems to me that the impact on our printing industry would be good.

I think in many cases the kinds of books that we in university publishing are talking, are so specialized and difficult, the one reason we can't get better prices in this country is that our printers don't want the business. It might make them try harder if there wasn't this little kicker there. I don't really see that it is going to make any big impact at all on the kinds of books that we publish.

Mr. PEASE. Mr. Gallman, a lot of University Presses are State University Presses subject to bidding procedures, public bidding procedures. What if an American company set up a subsidiary overseas and started bidding on books from the University of Indiana Press, and bid low on those books, got the bid, and could make the delivery.

I used to print books for University Presses. I know that the time crunch is not all that great. It is not a weekly magazine situation.

Is there anything to prevent that from happening on a fairly substantial scale?

Mr. GALLMAN. Well, what would prevent us from doing more of it, we do shop around for the best price, and you are right. We are not so concerned about speed, but we are concerned about control, and I know this is so at other University Presses. Our books are complicated. There are lots of different parts to them, footnotes, tables, formulas. We find it preferable most of the time to do them in this country, even now when we can get slightly better prices overseas—that plus the scheduling.

Mr. PEASE. What if the typesetting is all done by the U.S. printer, they are setting the type there, doing the page makeup there, shooting camera-ready copy. They have got negatives and they can transmit them by satellite to a plant in Taiwan. So what goes on in Taiwan is the actual printing and the binding done by good old internationally available machinery. The control situation is not so important then.

I guess the question I am getting at—and maybe the other gentlemen could chime in also—a year from now the manufacturing clause perhaps won't exist. What happens if the Taiwanese Government is figuring out a way to heavily subsidize printing plants in Taiwan, which get camera-ready plates or negatives by satellite transmission, and the products are being printed and bound over there, and made available for shipping back to the United States at a substantially lower price than American companies can produce it for, and that those prices are clearly subsidized prices.

Do you take the attitude that it is no skin off your nose, that that is not your business, it is your job to get the lowest price you can get?

Mr. BRACK. Not at all. As a matter of fact, as I said in my testimony, the considerations of the sheer cost of transportation and transporting those books, whether they are time sensitive or not, back to the United States versus the cost of warehousing books to meet demand here would mean that no matter how heavily subsidized the Taiwanese, under almost no circumstances could be competitive on a wholesale basis. Now, there are always going to be small niches of the publishing business that aren't concerned about cost or time sensitivity, and indeed could live with that. But the volume that represents is simply not enough to cause a major dislocation in jobs.

I might give an example closer to home. We have been talking about the Far East as though they are the evil enemy here. Right on our border in Mexico we would be able to solve some of the time and proximity questions, and as a matter of fact even copy with quality. In fact, they print books for us in Mexico for local distribution in the country of Mexico.

However, they have another rather onerous obstacle that would preclude American publishers from shifting major amounts of publishing to Mexico, and that is the fact that you are required in Mexico to buy paper locally, and the price of that paper, its availability, its quality, with all of the problems of corruption and everything else, make that really unthinkable on any wholesale basis.

So even if indeed the proximity, the timeliness and the warehousing considerations could be overcome, there are such obstacles as raw material that 1 year from now, even 2 years from now, make it rather unlikely that we would see a major dislocation or footrace of American book publishers overseas.

Mr. PEASE. Thank you

Chairman GIBBONS. Let me say that we have got a vote on. We have got very little time to make it. I must testify before the Senate at 2 o'clock. Could you close the meeting for me?

Mr. PEASE. I have to be at the Senate at 2 o'clock also.

Mr. FRENZEL. I will be glad to carry on in your absence. Mr. Chairman, could I ask unanimous consent before you go to enter into the record that there is a U.S.-imposed reservation in the Florence Treaty that protects the U.S. 201 procedure? This morning, it was alleged that because the United States was signatory to that convention, we wouldn't be able to use our procedures. Having read it, I now believe that there is a specific reservation for our process using the exact wording of the 201 process.

We have already asked Commerce and STR to give us further testimony on that, but I would like to have the language inserted in the record.

Chairman GIBBONS. Without objection.

[The information follows:]

PROTOCOL ANNEXED TO THE AGREEMENT ON THE IMPORTATION OF EDUCATIONAL, SCIENTIFIC AND CULTURAL MATERIALS

The contracting States,

In the interest of facilitating the participation of the United States of America in the Agreement on the Importation of Educational, Scientific and Cultural Materials, have agreed to the following;

1. The United States of America shall have the option of ratifying this Agreement, under article IX, or of accepting it, under article X, with the inclusion of the reservation hereunder.

2. In the event of the United States of America becoming Party to this Agreement with the reservation provided for in the preceding paragraph 1, the provisions of that reservation may be invoked by the Government of the United States of America with regard to any of the contracting States to this Agreement, or by any contracting State with regard to the United States of America provided that any measure imposed pursuant to such reservation shall be applied on a non-discriminatory basis.

(TEXT OF THE RESERVATION)

(a) If, as a result of the obligations incurred by a contracting State under this Agreement, any product covered by this Agreement is being imported into the territory of a contracting State in such relatively increased quantities and under such conditions as to cause or threaten serious injury to the domestic industry in that territory producing like or directly competitive products, the contracting State, under the conditions provided for by paragraph 2 above, shall be free, in respect of such product and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend, in whole or in part, any obligation under this Agreement with respect to such product.

(b) Before any contracting State shall take action pursuant to the provisions of paragraph (a) above, it shall give notice in writing to the United Nations Educational, Scientific and Cultural Organization as far in advance as may be practicable and shall afford the Organization and the contracting States which are Parties to this Agreement an opportunity to consult with it in respect of the proposed action.

(c) In critical circumstances where delay would cause damage which it would be difficult to repair, action under paragraph (a) above may be taken provisionally without prior consultation, on the condition that consultation be effected immediately after taking such action.

Chairman GIBBONS. Mr. Frenzel will be right back.

[Recess.]

Mr. FRENZEL. The subcommittee will come to order.

We will hear a panel composed of Mr. Henriques, Mr. Karp, and Mr. Alterman. We may as well go in that order.

STATEMENT OF VICO E. HENRIQUES, PRESIDENT, COMPUTER & BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

[The prepared statement begins at p. 106.]

Mr. HENRIQUES. Thank you, Mr. Chairman. My name is Vico Henriques, president of the Computer & Business Equipment Manufacturers Association. Put simply, CBEMA is unalterably opposed to the extension of the manufacturing clause for two main reasons:

First, it is an obstacle to gaining effective worldwide protection for intellectual property rights.

Second, it has negative long-term consequences for U.S. employment.

Those two reasons may surprise you because supporters of the manufacturing clause have used exactly the same arguments. Their arguments are, however, flawed. Let me expose those flaws for you.

Regarding intellectual property rights, supporters of extension argue that the manufacturing clause provides leverage for negotiating enhanced protection for intellectual property rights.

But what do the chief beneficiaries of such enhanced protection say? They don't want the clause extended. This is made clear by the fact that the major elements of the "intellectual property rights constituency" are among the 56 organizations that have signed a letter indicating their opposition to extension of the clause. I would now like to submit that letter, from the Coalition for the Expiration of the Manufacturing Clause, for the record.

[The letter is at p. 152.]

Mr. FRENZEL. Without objection. And I am not likely to object.

Mr. HENRIQUES. It makes little sense to me to argue that extension of the manufacturing clause will help enhance protection for intellectual property rights when those who are most concerned about obtaining better protection for intellectual property rights say that they want the manufacturing clause to expire in order to get that better protection.

Simply put, the manufacturing clause is a barrier to better protection because: It stands in the way of U.S. adherence to the Berne Copyright Convention, which provides a higher level of protection than the Universal Copyright Convention; it stands in the way of negotiating an intellectual property rights protection code during the next GATT round; and it stands in the way of bilateral negotiations to secure better protection for intellectual property rights.

Turning to employment, supporters of extension of the manufacturing clause argue that jobs are at stake. They are right, but about the wrong jobs. A major part of the economic future of the United States depends on our creativity. If we are not successful in securing better protection for intellectual property rights worldwide, not hundreds, not thousands, but millions of American jobs

will be jeopardized in what are now healthy and competitive industries.

In this sense, Congressman Russo is right: Don't hinder healthy industries. The manufacturing clause does.

Beyond these considerations, jobs are at stake in other important areas as well. Millions of U.S. jobs depend on trade. And to make trade more effective, we must work to strengthen the General Agreement on Tariffs and Trade so that barriers to U.S. goods are lowered or eliminated. Again, the manufacturing clause stands in the way of expanding trade.

To summarize, CBEMA supports reform of the GATT's dispute settlement procedure.

The GATT legality of the manufacturing clause is not a matter of speculation. It has been declared GATT illegal. We have agreed it would be absurd to send our negotiators to the next GATT round to seek dispute settlement reform when we do not abide by the existing procedures.

CBEMA supports the administration's efforts to achieve the elimination of nontariff barriers to trade during the next GATT round. How effectively can our negotiators argue this case with a universally known nontariff barrier to trade like the manufacturing clause sitting on the books?

We urge this committee to support expiration of the manufacturing clause. The manufacturing clause must not be permitted to stand as an anachronistic barrier to achieving these critically important objectives.

I would like to insert a comment about the performance of both the U.S. Trade Representative and the U.S. Department of Commerce in seeking relief and easing trade restraints. I participated with them in Taiwan and Singapore, and I think we have seen some results coming from those visits a little over 2 years ago. Last November, the USTR, the Ambassador from Japan, and the Ambassador from Canada signed an agreement, a trilateral agreement, which reduced the duties on computer parts among other things to zero. That agreement is now abrogated by the Canadians. But our Government officials have been working hard, and I think they have been working very effectively. We would like to continue to support them.

Second, about China, I met with the head of the Chinese copyright study commission less than a month ago. They are studying a copyright law; they have none right now. And one of the comments that they have made is that, in the suggestions that they have received about copyright protection in the People's Republic of China, they don't understand why the manufacturing clause still exists in the U.S. law. They are a little troubled by this when we are the ones that are pushing very hard to get a new copyright law.

Mr. FRENZEL. Thank you very much

Mr. Karp.

STATEMENT OF IRWIN KARP, COUNSEL, THE AUTHORS LEAGUE OF AMERICA, INC.

[The prepared statement begins at p. 109.]

Mr. KARP. Mr. Chairman, my name is Irwin Karp and I am counsel for The Authors League of America, Inc. The Authors League is indeed a member of the coalition and is pleased to be so, but the Authors League has been opposing the manufacturing clause long before the coalition was even a gleam in the eye of that perspicacious fellow who drafted the European Community hit list, for which the Authors League is very, very grateful.

We oppose the manufacturing clause for several reasons. First of all, we think it violates the first amendment. Second, it is damaging to authors. Third, it is unjustified. Fourth, it will provoke retaliation not only on the basis of a hit list but for other reasons I will mention. There are other means of protecting the printing industry, as the Government witnesses have already pointed out most fully and effectively.

Also, we believe that if the manufacturing clause is an effective tool for protecting jobs, then Mr. Russo and Mr. Pease ought to be supporting a bill to write the manufacturing clause into the Patent Act and the Lanham Act, because while the manufacturing clause might save a few hundred jobs in the Copyright Act, it could save hundreds of thousands of, even millions, if written into the patent or trademark legislation.

The fact that it isn't there, as we have pointed out frequently, testifies to Congress's judgment that the manufacturing clause really is not a tool to be used in protecting American industry.

Mr. FRENZEL. But you are playing with gasoline. I am glad they are not here to hear your suggestion.

Mr. KARP. I always end up the list of witnesses when the proponents of the manufacturing clause have long vanished from the scene.

Finally, the manufacturing clause would prevent U.S. entry into the Berne Convention. I think someone mentioned earlier that Arpad Bogsch, the director general of the Berne administrative agency, said it would not.

I really should point out while Mr. Bogsch is a friend of mine, he is also an amiable ambassador for the convention who is very anxious to sell U.S. membership, and he has testified on more than one point which he said will not bar our entry, while every copyright expert in the United States recognizes that these points will be a barrier, unless dealt with in the implementing bill. In the case of the manufacturing clause, there is no doubt; no one can deny that the application of the manufacturing clause to works of foreign origin, which would include many works by U.S. authors, is flatly prohibited by Berne, and that we could not in good conscience join Berne if the bill before you is enacted.

As to the first amendment, I have indicated in our statement our reasons for believing that the clause is invalid under the Constitution. We made that claim and lost it in the U.S. district court. We appealed and lost it in the court of appeals. However, on the appeal, Judge Oakes, who wrote a concurring opinion, said that in his opinion the clause may well be unconstitutional as a prior restraint, but he preferred not to decide the issue at that time, because he said, among other reasons, hopefully the clause will expire. I am afraid that his hopes were not based on a knowledge

of the congressional situation, but I am encouraged by developments since he said that.

The two-judge opinion by Judges Pratt and Winters should not give any friend of free expression too much comfort, because while Judge Pratt recognized that the manufacturing clause is clearly a prior restraint on the right to disseminate literary material, a whole class of literary material, he said in effect that is not a problem, because all authors have to do is give up their copyrights. The last thing in the world an author wants to do is give up his or her copyright, even the authors of University Press books.

The University of Indiana may occasionally run across a book whose author is more interested in brownie points and promotion than having his book published and protected, but that is not the experience of any member I know of in the 14,000-member Authors League of America, and I doubt that there are very many authors of books published by the firms represented by the previous witnesses who would tolerate abandonment of their copyrights.

One of the reasons is the reason the Supreme Court emphasized just last term. In the case brought by Harper & Row against the Nation magazine, Justice O'Connor pointed out that copyright was designed by the framers of the Constitution to be the engine of free expression. And if you take away the engine, you have derailed the train.

Without copyright, the right to express one's self freely in the media that we represent, and the previous witnesses represent, would be almost a meaningless right, unless Government were to subsidize that distribution, and that in itself would be totally contrary to the spirit of the first amendment.

I would just like to close by pointing out that were the clause to be extended, it would be extremely damaging to American authors. It is very possible for Simon & Schuster or Little, Brown, or any other American publisher who wants to do any one of a number of books, to circumvent the clause now and in the future, by simply having a foreign rather than an American author write that book, and that is a very easy way to accomplish that goal, and it can be done very practically.

I think also there will be considerably more retaliation by British and other foreign publishers who will insist that the books by their authors which can be printed anywhere in the world be printed anywhere in the world just to get even, for the same reason they are now formulating and will implement that hit list. They are going to apply it if this is extended and a vote for the clause clearly will be a vote for a much greater job loss than a vote for extension.

Thank you, Mr. Chairman.

Mr. FRENZEL. Thank you, Mr. Karp.

Mr. Alterman.

STATEMENT OF NORMAN ALTERMAN, VICE PRESIDENT, MOTION PICTURE ASSOCIATION OF AMERICA, INC., AND MOTION PICTURE EXPORT ASSOCIATION OF AMERICA, INC.

[The prepared statement begins at p. 114.]

Mr. ALTERMAN. Thank you. Before presenting my oral testimony, I would like to ask correction of a typographical error at the end of my written statement, with my apologies. The last three words; namely, "is defensible concept" should be two words, "indefensible concept."

My name is Norman Alterman, vice president of both the Motion Picture Association of America and the Motion Picture Export Association of America, and in addition the director of international legal affairs.

In this latter capacity, it is my responsibility to monitor trade legislation at home and around the world. I also actively participate in film industry responses to both tariff and nontariff barriers to free commerce wherever they arise.

Based upon my 25 years active experience in this field, I urge the end of the manufacturing clause, once and for all time. It represents a festering sore on the face of U.S. trade policy.

Others have detailed the technical difficulties, the technical deficiencies of this clause. I will pass on to my primary interest in the final demise of this anachronism, which arises from my intense involvement in recent years in U.S. trade policy concerning intellectual property and the trade barriers erected by other nations against the film industry as well as the urgent need to bring this country into the family of nations in the copyright arena.

It is quite evident from both the intensity of interest in the U.S. trade regarding intellectual property that both the public sector and the private sector recognize that the future of America's trade lies in the nongoods industries, services and intellectual property.

Extend the manufacturing clause, however modified, and a signal will be sent instantly to all corners of the world that the United States is not serious about protecting its intellectual property. Permit the clause to expire gracefully in accordance with the planned expiration of the law itself and you signal the world that the United States means what it says.

As an example, Singapore. An extremely effective campaign was mounted by several government departments and agencies jointly with private sector industries. The Government of Singapore was convinced to enact modern copyright protection and to apply that protection to United States works. Singapore is in the midst of the legislative enactment process but has threatened to withhold the protection from United States works if the manufacturing clause is extended. The cost to the U.S. copyright industries, computers, sound recordings and film, to say nothing of the book publishing industry of such a decision would run into hundreds of millions of dollars, due to the loss of copyright protection. Is a subsidy to the printing industry worth that cost to the country?

For many years the film industry has been plagued with a particularly insidious trade barrier which has stolen jobs from American workers, revenues from American manufacturers, and stolen the pride in quality control from American film. The barrier, a local manufacturing requirement.

The local printing requirement for American films as instituted in foreign countries hardly differs from the manufacturing clause we are today examining. Film copies intended for use in those countries may not be manufactured in the United States and im-

ported. They must be manufactured locally. The raw materials are restricted to those normally found in the country, whether of adequate quality or not, although the cost is usually at least that of the finest materials available anywhere. The quality control of the manufacturing process is normally nonexistent.

All of these countries look to the existence of the U.S. manufacturing clause as the bellwether of their need to be concerned

Being an outspoken partisan advocate of immediate adherence to the Berne Convention as an absolute necessity for the protection of film exports in the coming years, I will restrain myself and merely say that I believe that the manufacturing clause represents all that is inimical to the achievement of an international copyright regime.

In conclusion, I would like to say that I believe there are three lessons to be drawn. The image of the United States is badly tarnished abroad by the existence of the manufacturing clause. On a trade level, the existence of the manufacturing clause invites retaliation against other industries. Finally, the manufacturing clause inhibits U.S. adherence in full to the norms of international regimes for the protection of intellectual property.

In an era when trade policy imperatives encourage all branches of the U.S. Government to mobilize for a multifaceted drive for the protection of intellectual property exports, it is inconceivable that the legislative branch of that very same government would even consider the possibility of any action other than a decent interment for this indefensible concept.

Mr. FRENZEL. Thank you very much, gentlemen. I appreciate your being willing to be present. I would like to ask a few questions. One is of Mr. Henriques.

You didn't mention this, but I understand that one of the minor irritants is that you have have difficulty sending manuals. If you have these manuals, you have to have them printed in the United States?

Mr. HENRIQUES. Under the current law, there are two options open to us. If we print them overseas, and package them with a product which is being brought into the United States, the company has to abandon copyright, which makes the manuals and the value of the manuals, the intrinsic value of the information in the manuals, available very openly to pirates, and makes it very difficult to prosecute piracy claims in countries where the piracy exists.

If we do print them in the United States, the manual tends to be out of step with the product, because improvement in product is done at the local manufacturing level, not at the home office.

Mr. FRENZEL. And so sometimes to keep up with product development you have to run the risk of losing control of the copyright?

Mr. HENRIQUES. Yes, that is true. That is the current situation. I would like to point out, though, if I might, Mr. Chairman, that even if that were fixed in a continuing manufacturing clause, that would not alter our opinion of the manufacturing clause. It would be a fix for the industry about that particular problem, but it would not help the GATT problem.

Mr. FRENZEL. On the previous panel one of the gentlemen complained about the increase in Canadian duties from zero to 10 per-

cent, and another gentleman on the same panel said those duties would never go into effect.

The general complaint of the people who want protection here, or rather one of the pieces of their rationale, is that talk of retaliation is foolish because no one will ever retaliate. I wonder if you would tell us something about your industry's experience after long negotiations with Canada on this subject.

Mr. HENRIQUES. Well, as I mentioned, there was an agreement signed, a trilateral agreement, among the United States, Japan, and Canada to reduce tariffs on computer parts, assemblies and components, to zero. The agreement was signed last year, toward the end of November, went into effect in January, and on June 6 the Canadians reimposed tariffs averaging about 4 percent on that class of equipment. And regardless of what the prior witness said, that duty is now in effect, has been in effect since June 6, and is being paid and collected.

Mr. FRENZEL. Exactly. And the reduction of duty is something that your industry has worked on for half a dozen years?

Mr. HENRIQUES. Yes; we would like to see worldwide all duties go to zero. We would like to see a universal free trade area, if you will, a nondutiable area, and we have been working actively with our Government to bring some kind of rationality or certainly reflectiveness in the customs picture, bringing the rates down and making the rates more equal, and we think we have been making significant progress in that area.

The Canadian thing is a disappointment to us. But as was pointed out before, it is GATT-legal, and was retaliation for something that we did.

Mr. FRENZEL. Of course it was, but here is a classic example. Here is the country that has the largest trade surplus with us on a per capita or per GNP basis in the world, and this is exactly the kind of company that proponents of this legislation say exactly the kind of country that won't dare retaliate. It is already retaliating and your companies are paying duty, are they not?

Mr. HENRIQUES. Yes; I should point out that while the Canadians have a very large trade surplus with us, in that particular area in which they impose the duties they do not have a trade surplus. We have a $900 million per year trade surplus with them. In 1985 we exported 1.2 billion dollars' worth of computer parts, components and assemblies to Canada. They exported to the United States about $300 million, so we have a $900 million export surplus.

Another thing about the Canadian situation is that it is the Canadian consumers who are being hurt, because they are the ones that will be paying that duty in the final price. Much of what goes into Canada is included in other machines which are then reexported from Canada, at which time the company that does the reexporting gets a refund of the duties paid upon import.

Mr. FRENZEL. Thank you very much

Mr. Karp, I am really sorry I lost the name of your organization.

Mr. KARP. That is quite all right, Mr. Chairman.

Mr. FRENZEL. On a distinguished list of people who aspire for the expiration of the manufacturing clause.

You have 14,000 members?

Mr. KARP. Yes, we do.

Mr. FRENZEL. How do you poll your membership to know whether you should sign that list or come here to represent them?

Mr. KARP. We report to our members frequently. I think we have bored them to death already with the reports about our opposition to the maufacturing clause.

Mr. FRENZEL. This is a longstanding position?

Mr. KARP. That is right, since 1965.

Mr. FRENZEL. So your institution, your association, has been in a consistent position of favoring the expiration?

Mr. KARP. Yes; Mr. Chairman, at the outset of the congressional program to revise the Copyright Act in the early 1960's, and since we submitted our position on that several times in writing, and we have testified probably 10 or 12 times since then in opposition to the clause.

Mr. FRENZEL. Thank you very much.

Mr. Alterman, you have indicated that you have difficulty getting your products in the form that you want to get them into, into other markets. One of the advantages alleged by the proponents of the manufacturing clause was that somehow this would give us a chit that would wedge our way into those markets. You seem to take an opposite point of view. You have been at this a while. What has been your experience?

Mr. ALTERMAN. Just the opposite, actually. The manufacturing clause in earlier years was never really thrown up to us. After the revision of the copyright law in 1976. The manufacturing clause I think stuck out more clearly as an anachronism in our own law. After that time every time we went in to try to obtain an improvement in the law or regulations applicable in foreign countries, whether it be on the printing of film copies or on the copyright law itself, this was always thrown up to us as an obstacle to their granting us favorable treatment, and it is still going on.

In fact, if I may, I would like to just read a telex that I received yesterday from our Far Eastern office in Singapore. They did not know I was coming here to testify, because I didn't know until roughly the time this telex was sent, and in fact I know they didn't know about the hearings. The telex is very short. It just says, "What is the latest news regarding the congressional attempt to continue the manufacturing clause? Experts here and other countries advise that local governments might use passage of manufacturing clause as excuse to prevent or delay adequate protection to American works."

This was received yesterday.

Mr. FRENZEL. It seems to be quite clear. Does anybody else on the panel have a concluding statement?

Mr. KARP. I would just like to mention one thing, Mr. Chairman.

Mr. FRENZEL. Please do.

Mr. KARP. Witnesses for the printing industry have berated the U.S. Trade Representative and the Secretary for what they claim was a lack of adequate defense of the U.S. position before GATT. That seems to be a characteristic of the two groups, because when we brought our lawsuit in the southern district, they made a motion to intervene as defendants on the ground that the Government wouldn't adequately defend the suit, since the administration had opposed the manufacturing clause. The district court judge

brushed that aside very impatiently indeed, and the record shows that the defense was quite adequate. The Government won the case.

Mr. FRENZEL. Thank you very much Mr. Alterman.

Mr. ALTERMAN. Mr. Chairman, I would like to finish with one comment, and that is an increasing feeling that the other copyright industries or the copyright industries in toto are being held ransom to the printing plants of this country, and I wonder are we being sacrificed to protect their existence or their profits?

Thank you.

Mr. FRENZEL. I am not going to be so rash as to answer that.

Mr. ALTERMAN. It was intended as a rhetorical question.

Mr. FRENZEL. The Congress, in its effort to spread cookies around the world, always worries about the problem that is right in front of it, and it never worries about the unintended consequences or the consequences that it can't foresee or that are not thrown in its face. I assume that your presence here is better warning than we have often been able to provide.

Mr. ALTERMAN. Thank you.

Mr. FRENZEL. I think the committee is pleased with the depth of the witness list this year, and its balance as compared with the previous years. Thank you all for coming. The meeting is adjourned.

[Whereupon, at 2:15 p.m., the hearing was adjourned.]

[Prepared statements, responses to requests made during the hearing, and submissions for the record follow:]

62-742 0 - 86 - 3

FOR IMMEDIATE RELEASE
WEDNESDAY, JUNE 18, 1986

SUBCOMMITTEE ON TRADE #31
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3943

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A HEARING ON H.R. 4696, A BILL TO AMEND THE REQUIREMENTS OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW, TO BE HELD JUNE 26, 1986

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold a hearing on H.R. 4696 (Mr. Frank, Mr. Russo, Mr. Ford of Tennessee, Mrs. Kennelly, Mr. Pease, Mr. Jacobs, Mr. Duncan, Mr. Donnelly, and Mr. Guarini, et al), a bill to amend the requirements of the manufacturing clause of the copyright law, which was also referred to the Committee on the Judiciary. The hearing will be held on Thursday, June 26, 1986, in room B-318 Rayburn House Office Building, beginning at 10:00 a.m.

The manufacturing clause requires that certain publications be printed in the United States or Canada in order to receive copyright protection. It has existed in one form or another since 1891. Under current law, the manufacturing clause expires on July 1, 1986; and subsequent to that date, copyright protection would no longer be denied to publications printed outside the United States and Canada. H.R. 4696 would extend the manufacturing clause indefinitely with certain modifications. The manufacturing clause has been found to violate the General Agreement on Tariffs and Trade (GATT) by a GATT panel.

The purpose of the hearing will be to elicit views from the Administration and from interested parties regarding the economic and trade policy implications of retaining the manufacturing clause in its amended form.

Testimony will be received from invited witnesses only. Persons representing the affected industries should contact Chela Sullivan or George Weise of the Subcommittee staff [telephone (202) 225-3943] by close of business, Tuesday, June 24, 1986, to discuss the possibility of appearing or submitting testimony.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE

Any interested person or organization may file a written statement for inclusion in the printed record. Persons submitting written statements for the printed record of the hearing should submit at least six (6) copies by the close of business, Friday, June 27, 1986, to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public at the hearing, they may provide 100 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, before the hearing begins.

SEE ENCLOSED FORMATTING REQUIREMENTS.

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99TH CONGRESS
2D SESSION

H. R. 4696

To amend the requirements of the manufacturing clause of title 17 of the United States Code, the copyright law.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1986

Mr. FRANK (for himself, Mr. FISH, Mr. RUSSO, Mr. GILMAN, Mr. HAWKINS, Mr. JEFFORDS, Mr. ACKERMAN, Mr. BARNES, Mr. BEDELL, Mrs. BENTLEY, Mr. BERMAN, Mr. BOEHLERT, Mr. BOLAND, Mr. BONER of Tennessee, Mr. BORSKI, Mr. BOUCHER, Mrs. BOXER, Mr. BROOKS, Mr. BRUCE, Mr. BRYANT, Mrs. BURTON of California, Mrs. BYRON, Mr. CARR, Mr. COELHO, Mrs. COLLINS, Mr. CONTE, Mr. CONYERS, Mr. DELLUMS, Mr. DIOGUARDI, Mr. DOWDY of Mississippi, Mr. DYSON, Mr. FAUNTROY, Mr. FAZIO, Mr. FLORIO, Mr. FOGLIETTA, Mr. FORD of Michigan, Mr. FORD of Tennessee, Mr. GEJDENSON, Mr. GEKAS, Mr. GRAY of Illinois, Mr. HENDON, Mr. HENRY, Mr. HORTON, Mr. HOYER, Mr. HUGHES, Mr. KANJORSKI, Mrs. KENNELLY, Mr. KINDNESS, Mr. KLECZKA, Mr. KOSTMAYER, Mr. LANTOS, Mr. MANTON, Mr. MARKEY, Mr. MARTIN of New York, Mr. MARTINEZ, Mr. MCCLOSKEY, Mr. MCDADE, Mr. MCHUGH, Mr. MCKINNEY, Mr. MITCHELL, Mr. MOAKLEY, Mr. MOODY, Mr. MORRISON of Connecticut, Mr. MRAZEK, Mr. NOWAK, Mr. OBEY, Mr. OXLEY, Mr. PEASE, Mr. PEPPER, Mr. PETRI, Mr. QUILLEN, Mr. RINALDO, Mr. ROBINSON, Mr. ROTH, Mr. SABO, Mr. SCHEUER, Mr. SEIBERLING, Mr. SENSENBRENNER, Mr. SHELBY, Mr. SMITH of Florida, Mr. STOKES, Mr. STUDDS, Mr. TORRES, Mr. TOWNS, Mr. VENTO, Mr. WEAVER, Mr. WOLPE, Mr. WORTLEY, Mr. WYDEN, Mr. YATRON, Mr. YOUNG of Missouri, and Mr. LAFALCE) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

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A BILL

To amend the requirements of the manufacturing clause of title 17 of the United States Code, the copyright law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That this Act may be cited as the "Manufacture and Public Distribution of Certain Copyrighted Material Act".

SEC. 2. (a) Section 601(a) of title 17, United States Code, is amended by—

(1) striking out "Prior" through "except" and inserting in lieu thereof "Except";

(2) striking out "or Canada." and inserting in lieu thereof "or unless the portions consisting of such material have been—

"(1) manufactured in Canada prior to January 1, 1989; or

"(2) manufactured in a certified country on or after July 1, 1988. For the purpose of this section, a 'certified country' means a country, territory, possession, or other jurisdiction which—

"(A) the United States Trade Representative has certified to the Congress—

"(i) as providing adequate and effective means under its laws for United States nationals to secure, exercise, and enforce exclusive rights under copyright; and

"(ii) either

"(I) as imposing no material non-tariff barriers to trade in printed material; as imposing no tariff barriers to trade in printed material that is materially inconsistent with tariff bindings, if any, entered into by such jurisdiction with the United States; and as being an adherent to the Agreement on the Importation of Educational, Scientific and Cultural Material of 1950 (the Florence Agreement), or with respect to printed books, newspapers and periodicals and publications identified in items (i), (ii), and (viii) of Annex A to such Agreement, as imposing no tariff barrier materially inconsistent with the provisions of Article I of such Agreement if such jurisdiction is not an adherent to such Agreement; or

"(II) as having in force a free trade agreement with the United States governing trade in printed material; and as being an adherent to the Agreement on the Importation of Educational, Scientific and Cultural Material of 1950

(the Florence Agreement) or, with respect to printed books, newspapers and periodicals, and catalogs of books and publications identified in items (i), (ii), and (viii) of Annex A to such Agreement, as imposing no tariff barrier materially inconsistent with the provisions of Article I of such Agreement if such jurisdiction is not an adherent to such Agreement and regardless of whether such tariff is permitted under the pertinent trade agreement; and

"(B) the Secretary of Labor has certified to the Congress as taking or having taken steps to afford internationally recognized worker rights, as referred to in section 502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4)), to its workers, except that such certification by the Secretary of Labor may be waived if the President determines that such waiver is in the national economic interest of the United States.".

SEC. 3. Section 601 is amended by adding at the end thereof the following:

"(f)(1) The certification referred to in subsection (a) shall be commenced upon the initiative of the United States Trade Representative or upon petition to the United States Trade Representative by any jurisdiction or interested party. Such proceedings may be commenced on or after January 1, 1987, and final certifications may be published at any time thereafter pursuant to the terms of this section: *Provided,* That no certification shall permit the importation, under clause (2) of subsection (a), of materials subject to this section manufactured prior to July 1, 1988.

"(2) Any certification made pursuant to subsection (a) shall be withdrawn by notification to the Congress given by the United States Trade Representative if the United States Trade Representative shall find that the criteria of subsection (a)(2)(A) are no longer met, or by the Secretary of Labor if such Secretary finds that the criteria of subsection (a)(2)(B) are no longer met: *Provided, however,* That no such withdrawal, no expiration, termination, or other cancellation of any trade agreement referred to in subsection (a)(2)(A), and no other provision of this section shall prevent the importation or distribution of any copies manufactured prior to the effective date of such withdrawal or cancellation, or the importation or distribution of any copies manufactured following

such effective date in a country referred to in subsection (a) pursuant to any contract, agreement, or understanding entered into, or reasonable expectation relied upon, prior to such effective date and imported during a period of twenty-four months following such date. The terms of the foregoing proviso shall apply equally to the importation and distribution on or after January 1, 1989 of copies manufactured in Canada, in the event that on such date Canada is not a certified country.

"(3) Any proposed certification or notification of withdrawal made pursuant to this section shall be published promptly in the Federal Register by the United States Trade Representative and opportunity for public comment shall be afforded to interested parties. For purposes of this section, interested parties shall not necessarily be limited to parties with a material interest in the certification or notification of withdrawal of a jurisdiction. No certification or notification of withdrawal shall become final until at least thirty days following publication of such notice in the Federal Register.".

SEC. 4. (a) Section 601(b)(6) of title 17, United States Code is amended by striking out "or Canada" and inserting in lieu thereof "or, during the applicable period, Canada or a certified country".

(b) Section 601(c) of title 17, United States Code, is amended by striking out "or Canada" each place it appears,

and inserting in lieu thereof "or, during the applicable period, Canada or a certified country".

(c) Section 601(d)(2) of title 17, United States Code, is amended by striking out "or Canada".

(d) Section 601(d)(3) of title 17, United States Code, is amended by striking out "or Canada" and inserting in lieu thereof ", Canada or a certified country".

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Ambassador Clayton Yeutter
United States Trade Representative

Testimony on H.R. 4696, A Bill to Extend and Amend
The Manufacturing Clause

June 26, 1986

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to discuss H.R. 4696, a bill to extend and amend the manufacturing clause of U.S. copyright law. You may be wondering why I, as U.S. Trade Representative, am testifying on an apparently simple copyright matter.

I am here today because the manufacturing clause is almost exclusively a trade issue. Its extension will substantially harm our domestic and international trade and economic interests.

The Administration opposes any form of extension of the clause beyond its current expiration date of June 30, 1986. Let me briefly mention the reasons for our opposition.

- o The clause in any form will significantly harm U.S. exporting firms and their workers through the retaliation that we can expect our trade partners to take.

- o The clause is not needed by the U.S. printing industry, which is highly competitive in today's world markets.

- o As a negotiator, my efforts to carry out the Administration's and Congress's goal of strengthening GATT rules and procedures is undercut by the clause.

- o The clause seriously impedes our efforts to improve international protection for U.S. copyrights and other forms of intellectual property.

- o The clause is an inappropriate and ineffective tool to use in obtaining foreign concessions in trade and intellectual property law.

- o The U.S. fight against unfair and discriminatory foreign trade practices is seriously compromised by the clause.

With that brief overview, I would now like set out for you in greater detail the numerous and varied reasons why extension of the manufacturing clause is not in the best interests of the United States.

The Manufacturing Clause: An Overview

In brief, the manufacturing clause prohibits imports, except from Canada, of more than 2000 copies of any copyrighted, nondramatic literary works by an American author or resident. It is a holdover from the 19th century when we wanted to protect our infant printing industry. The clause primarily affects books, but also applies to newspapers, periodicals, newsletters and other publications. It does not cover items that are primarily pictorial, such as greeting cards, or where copyright is not claimed, such as manifold business forms.

The clause was originally set by Congress in 1976 to expire in 1982. Despite a Presidential veto, Congress extended the bill to June 30 of this year.

H.R. 4696 and its companion bill in the Senate, S. 1822, would extend the manufacturing clause permanently. They would also

remove the Canadian exemption after January 1, 1989. Effective July 1, 1988, waivers could be issued allowing imports from countries which:

1. the U.S. Trade Representative certifies have no material tariff or nontariff barriers to U.S. printed products, and which adequately protect U.S. intellectual property rights, and,

2. the Secretary of Labor certifies have taken or are taking steps to grant internationally recognized workers rights. This determination may be waived by the President based on the national economic interest.

When the clause was extended in 1982, the European Communities (EC) asked for a GATT panel review of the clause and its extension. In May 1984, the GATT ruled that the clause is an import restraint inconsistent with the GATT. The ruling gives other countries whose exports are hurt by the clause the right to seek compensation from the United States or to retaliate by restricting their imports from the United States.

The Effects of Retaliation

The right to retaliate will almost certainly be used by the EC and possibly other trade partners if H.R. 4696 is passed and the manufacturing clause is extended beyond June 30. Millions of dollars of our exports in some of our most competitive sectors are open to foreign retaliation.

The EC has said it will retaliate to the tune of $300-500 million if the clause is extended. The EC is serious about its threat. In March, it asked the GATT for authority to suspend trade concessions to the United States equal to the damage caused to it by the clause. Likely targets include chemicals; paper products; textile, printing and tobacco machinery; and tobacco and tobacco products.

Those industries had shipments totaling $127.7 billion in 1985 and employed over 718,000 workers. Their exports to the EC alone came to almost $4 billion, which would be subject to the uncertainty of possible retaliation (Table 1). Among the states which could be hard hit by EC retaliation are Alabama, the Carolinas, Florida, Georgia, Illinois, Kentucky, Louisiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia and Wisconsin. Exporting firms in those states will lose sales and workers their jobs.

Those who claim that today's situation is no different than it was in 1982 are sorely mistaken. When the clause was extended in 1982, there was no GATT finding that the clause is illegal. Without such a ruling, the EC did not have the right under the GATT to retaliate against us, nor did any other country. The 1984 ruling against the United States fundamentally changed the situation.

Nor do the cumbersome waiver provisions in H.R. 4696 satisfy our GATT obligations. They will not forestall retaliation against U.S. exports. Waivers cannot be granted before July 1, 1988. Few, if any, countries can be certain of certification under the bill's criteria. Indeed, given the provisions of the bill, I have strong doubts that Canada, the EC or Japan could obtain a waiver.

With the 1984 GATT ruling, the EC is understandably unwilling to wait another two years for the possibility of waivers for its member countries. Canada, a major importer of U.S. books and other printed material, has indicated it, too, will retaliate if the United States extends the applicability of the manufacturing clause to it. If it occurred, such retaliation could be above

and beyond the recent action taken by Canada in response to our decision on shakes and shingles.

Congress has repeatedly asked the Administration to take measures necessary to open foreign markets to U.S. goods and increase U.S. exports. There is likely to be increased economic growth in Europe this year accompanied by a rising European demand for imports. With the fall in the dollar's exchange rate as compared to major European currencies, our exporters are now poised to take advantage of this situation. We cannot afford to shoot ourselves in the foot with measures such as the manufacturing clause.

The Clause Is Not Needed by the U.S. Printing Industry

In the face of certain retaliation by the EC, extension of the clause is all the more unjustifiable because it would provide no net economic benefit to the United States. The printing industry and its workers do not need the clause to remain healthy, competitive and employed.

The special protection offered by the manufacturing clause was granted at the turn of the century to protect an infant American industry. Today, the U.S. printing industry is among the world's most advanced and efficient. The United States is the world's leading exporter of printed products. In 1984, we exported almost $1.4 billion worth of printed matter, up from just under $1 billion in 1979 (Table 2).

Some are concerned about the threat of low-cost foreign labor. However, the USITC has shown that labor costs make up only 10-15 percent of the total cost of printing and binding books covered under clause. Transportation and communications costs for overseas printers exceed foreign labor cost advantages for most of these books. The United States has technological advantages and benefits from low-cost, high quality paper and other materials.

Much concern has been expressed over the possible employment effects of eliminating the manufacturing clause. In various studies, the Congressional Research Service, the Department of Labor and the International Trade Commission have all concluded that there would be no long-term economy wide job losses after the clause expires. Even the Senior Vice President of the Printing Industries of America has publicly acknowledged that "job losses will not be massive."

The recent study by the Department of Labor reviewed and updated its 1981 study on this issue. Labor examined a range of impacts from low to high. The estimated job opportunity loss in the printing and publishing industry ranged from 900 to 23,300 job opportunities lost. These estimates range from less than one percent to less than two percent of actual 1982 employment levels.

In its 1983 study, the USITC came up with estimated effects on job opportunities similar to those of the Department of Labor. With an assumed two percent loss of U.S. sales, the USITC estimated that the printing and publishing industry would lose 732 job opportunities. With a 10 percent sales loss, the estimated figure rises to just over 3,500.

I want to emphasize that in each case I am talking about job opportunities, not actual jobs! A job is something that exists right now with a worker holding it, while a job opportunity is a possibility, not an actuality. Lost job opportunities do not always translate into lost jobs.

This is especially true for a healthy, vibrant sector of the economy such as the printing industry, which has been a major source of job creation among manufacturing industries. In terms of productions workers, employment in the printing and publishing industry has grown about 12.5 percent since 1979, while in manufacturing as

a whole it has dropped over 12 percent.

Growth in domestic demand, retirements and voluntary job transfers should all reduce the potential job losses. Indeed, given the projections of continued employment growth in the printing and publishing sector, it may be that no real jobs will be lost in the printing and publishing sector. Total employment in the printing and publishing sector is projected to grow by 2.2 percent a year to 1995, creating over 30,000 jobs a year (Table 3).

Diminished Support for U.S. Efforts to Strengthen the GATT

The Administration, this committee and Congress in general agree that we need to strengthen the GATT's ability to enforce its rules governing trade. The only way the United States can ensure that its businesses are receiving fair treatment overseas is through fair and effective international trade rules.

One of the major functions of the GATT is to resolve disputes between its member countries. Some conspicuous failures in recent years have undermined public confidence in the dispute settlement system. The United States seeks to strengthen this system and, thereby, international adherence to GATT rules.

In accordance with already agreed dispute settlement procedures, a GATT panel has ruled that the manufacturing clause is inconsistent with the GATT and should be removed. The manufacturing clause had been grandfathered under the GATT. However, the GATT found that Congress fundamentally changed the clause in 1976 when it inserted a termination date for the first time in 85 years. Reasonable expectations were created that U.S. policy had changed and that the United States was moving to bring its law into conformity with the GATT. Once this change was made in 1976, the United States could not turn back and make its laws less conforming with the GATT by then extending the clause in 1982. It was for these reasons that the GATT ruled in 1984 that the 1982 extension of the clause was GATT-illegal.

Ignoring the GATT panel's finding will almost certainly result in two severe consequences: (1) other countries will question our commitment to improving the GATT dispute settlement mechanism and (2) when faced with adverse GATT panel findings, other countries will resist even more the implementation of panel reports using the United States as an example.

If we are to build support for strengthening the GATT dispute settlement process, we must observe that process. We cannot ask that it be applied to others and not apply it to ourselves.

Impact on U.S. Efforts to Strengthen International Intellectual Property Rights Protection

Safeguarding U.S. intellectual property rights is one of the chief goals of the Administration and has been given high priority by Congress. Piracy, misappropriation and infringement of our intellectual property causes severe trade distortions and is an increasingly important trade problem.

As you know, we want a new multilateral trade round to consider new issues of importance to U.S. trade such as intellectual property. It makes our job of convincing our trading partners to include intellectual property much more difficult if we show we are not willing to consider our own existing laws and bring them into conformity with international law.

On a bilateral basis, extending the clause will undercut our attempts to encourage other countries to strengthen their intellectual property laws. We have made progress with Korea, Taiwan and Singapore, but these efforts will be severely undermined should the clause continue beyond June 30.

For example, Singapore has linked its participation in the Universal Copyright Convention to the fate of the clause. U.S. firms could be denied improved protection for their books, records, films and computer software. Extending the clause this year would give other countries the perfect excuse to tell us to clean up our own house before we attempt to make them clean up their houses!

Moreover, the clause materially impedes U.S. access to the Berne Convention. U.S. accession is supported by a wide range of U.S. copyright industries because it would provide stronger and more effective protection for U.S. works abroad. The Berne convention restricts the requirements a country can impose for obtaining copyright protection. The convention has been interpreted as forbidding domestic manufacturing requirements such as the manufacturing clause because they violate the formalities restriction. Therefore, extension of the clause would interfere with a possible U.S. attempt to join the convention. At a time when we are pushing for increased respect for intellectual property rights in all forums, we should be moving toward adherence to the convention.

The Clause Is Not a Negotiating Tool to Obtain Foreign Trade Concessions

A reason frequently cited for extending the clause is that the United States should not give up a bargaining chip without receiving some trade concession from our trading partners.

I am sorry to say that the clause gives us no leverage in international negotiations. If the clause were GATT-legal, it might give us some limited leverage.

But the fundamental issue is that the clause has been found GATT-illegal. Countries already have a right to demand compensation from the United States or to retaliate against us for the clause. For negotiating purposes, the clause is a paper tiger without teeth.

Moreover, under Section 301, the President already has the necessary authority to root out unfair foreign trade practices and increase access to foreign markets for U.S. exports. It is an authority which he has and will continue to use vigorously to protect U.S. trading interests.

The Clause Undermines Administration Efforts to Combat Foreign Unfair Trade Practices

Last September, President Reagan announced a series of measures to deal with foreign unfair trade practices. Chief among these was the unprecedented step of self-initiating Section 301 unfair trade cases against several U.S. trading partners. In some cases, we have retaliated when our trading partners have failed to follow the rules of free and fair international trade.

If the manufacturing clause were imposed by a foreign government, it would be precisely the type of barrier which we would attack using our Section 301 authority. It is an unreasonable, unfair restriction on foreign commerce.

U.S. credibility on unfair trade practices, and thus our ability to negotiate from a position of strength, is seriously weakened by the manufacturing clause. Its extension will undermine U.S. efforts to eliminate foreign unfair trade practices which damage U.S. industries and workers.

Proposed Compromises on Extension of the Clause

There have been proposals to try to diminish what are seen as the major defects of H.R. 4696. In brief, the two-year extension of the clause would be eliminated. Countries such as Japan and

the nations of the European Community would be granted early certification under the bill's waiver provisions on no material barriers to U.S. printed products, adequate protection of intellectual property rights, and steps to grant internationally recognized workers rights. The proponents of the approach say it would eliminate the problems (in terms of retaliation) with the proposed extension while preserving elements of reciprocity in the legislation.

This approach is without merit. It has many of the same weaknesses as the original H.R. 4696.

First, any extension of the clause still leaves us in clear violation of our international commitments. We have made a big issue of other countries not fulfilling their commitments in the GATT and elsewhere. We cannot afford to give these nations any excuse to point the finger at us.

With regard to the GATT, as noted earlier we are in the midst of a major effort to strengthen the international mechanisms for settling trade disputes. Any extension of the clause would be tantamount to thumbing our nose at the GATT. The Administration's efforts to strengthen the dispute settlement mechanism would be seriously undercut.

The compromise still leaves us subject to retaliation. First, the waiver process cannot be accomplished overnight. It will take time for the certification process to run its course. Until the certification process is complete, we would be subject to retaliation even from Japan and the EC.

Moreover, despite legislative language in any report accompanying the bill that says the EC and Japan would be expected to be exempted, these countries still may not qualify for a waiver. As the certification process starts, there undoubtedly will be discovered hitherto unknown intellectual property problems and barriers to U.S. exports of printed goods. The EC is a body representing 12 different countries with varying degrees of intellectual property rights protection and nontariff trade barriers. For example, with respect to the intellectual property provisions, the EC has given Spain an exemption to 1992 from certain rigors of EC intellectual property protection. Since the EC negotiates with one voice, the exemption could be the grounds for a challenge to any waiver of the EC.

In addition, the provisions for early certification will not cover certain major U.S. trading partners like Canada. Canada, and other countries not exempted from the clause, will certainly retaliate against us once the clause is applied to them.

The clause, with or without reciprocity provisions, gives us no leverage in international negotiations. There can be no leverage to a provision that has already been found to violate our international commitments, including the GATT.

Any extension of the clause would undercut, rather than support, our international negotiators in a host of areas, including our attempts to improve international protection of intellectual property rights and to deal with foreign unfair trade practices. Any extension would give other countries an excuse to tell us to clean our own house first.

We already have the necessary tools to deal with foreign trade barriers, unfair trade practices and shortcomings in intellectual property protection. Section 301 is a powerful weapon which we are actively using, as in the case against Korea on intellectual property. There is the GSP review process. We also have the ongoing free trade negotiations with Canada to address the issues of market access and intellectual property protection. The Administration is committed to addressing these issues in the FTA negotiations and has given them a high priority.

Conclusion

In the face of large costs and no benefits, there is no justification for extending the manufacturing clause. It cannot be used as leverage to open foreign markets. It will not win better protection overseas for U.S. intellectual property rights and might well harm our efforts in this area.

Extension of the clause is protectionism pure and simple. It will result is less access abroad for U.S. goods and services and less protection for U.S. intellectual property.

In terms of jobs, all analyses show the impact of the expiration of the clause will have little or no effect on current employment in the printing industry. On the other hand, foreign retaliation is likely to be immediate, costing us hundreds of millions of dollars in exports and the countless jobs related to those exports. In other words, the bill is a loser from every standpoint.

A broad range of private sector groups and companies agree with us that extension of the clause would be detrimental to the United States. Associations such as the Motion Picture Association of America, the Computer and Business Equipment Manufacturers Association, the Electronics Industry Association, the Tobacco Association of the U.S., the Authors League of America, the American Paper Institute and the American Association of Importers and Exporters oppose this legislation. Firms in the computer, broadcasting, electronics, tobacco, paper, chemical and machinery sectors are all against any extension of the clause.

For all the reasons I have discussed, the Administration adamantly opposes any extension of the clause in any form. It is contrary to the national interest and will harm U.S. producers, workers and consumers. In 1982, Congress specifically wrote a sunset provision into the law. The provision should be honored. If, however, Congress passes any bill extending the manufacturing clause, I will recommend that the President veto it.

TABLE 1: Possible EC Retaliation Targets - Shipments, Exports and Employment

	.....Possible EC Retaliation Targets.....									
	2111 Cigarette Mfg.	0132 Tobacco Farms	Paper 1/	2819 Industrial Inorganic Chem, nec	2824 Organic Fibers Noncell.	2869 Industrial Organic Chem, nec	3552 Textile Machinery	3554 Paper Industries Machinery	3555 Printing Trades Machinery	Totals of These Industries
1985 Ind. Shipments ($ millions)	14196.0	2555.1	43811.0	14625.0	8287.5 3/	38900.0	1179.0	1171.0	2925.0	127649.6
Exports to EC 1985	332.5	643.8	301.0	932.2	229.8	1283.2	55.3	58.0	143.4	3979.2
Exp to EC Shipments 1985	0.023	0.253	0.007	0.064		0.033	0.047	0.050	0.049	
1982 Employment (1000)										
United States	41.5	130.0	227.7	81.7	60.4	111.8	19.4	17.8	28.2	718.5
North Carolina	18.6	63.0 2/	7.4	2.8	11.5		4.7			108.0
South Carolina		10.7 2/	5.9 2/	2.5 2/	15.4		6.4			40.9
Kentucky	2.5 2/	32.9 2/		2.6						38.0
Virginia	2.5 2/	11.3 2/	6.5 2/	3.0	12.3					35.6
Wisconsin			22.3					4.8		27.1
Tennessee			3.8	15.3	4.6 2/	2.5 2/				26.2
Ohio			12.3	6.3		2.9			2.5	24.0
Louisiana			6.6	2.9		14.0				23.5
New Jersey			4.1	3.1		11.4		1.4	2.7	22.7
Georgia		8.2	9.5 2/		4.6 2/					22.3
Pennsylvania			10.5	2.8		2.9		2.1	2.2	20.5
Massachusetts			10.7	2.2				2.0	5.1	20.0
Michigan			11.2			7.3				18.5

TABLE 1 (continued)

	.....Possible EC Retaliation Targets.....									
	2111 Cigarette Mfg.	0132 Tobacco Farms	Paper 1/	2819 Industrial Inorganic Chem, nec	2824 Organic Fibers Noncell.	2869 Industrial Organic Chem, nec	3552 Textile Machinery	3554 Paper Industries Machinery	3555 Printing Trades Machinery	Totals of These Industries
New York			9.3			2.7		1.7	2.5	16.2
Alabama			13.6			2.1				15.7
Maine			12.9							12.9
Texas			5.8 2/	4.3		2.5 2/				12.6
Illinois			4.6 2/	2.8		2.8			2.6	12.0
California			6.2 2/	2.1		2.1			1.5	11.9
Florida			4.7 2/		4.6 2/					9.3
Washington			6.8	2.5 2/						9.3
West Virginia						8.0				8.0
Minnesota			6.2 2/							6.2
Oregon			6.1 2/							6.1
Arkansas			4.9 2/							4.9
Delaware					4.6 2/					4.6
New Hampshire			4.4 2/							4.4
Maryland		3.8 2/								3.8
Missouri						2.6				2.6

1/ Total of Paper Mills (2621), Paperboard Mills (2631) and Paper Coating (2641)
2/ Estimate
3/ 1982 Shipments

TABLE 2: WORLD EXPORTS OF PRINTED MATTER— TOP TEN COUNTRIES, 1979-1984

(Millions of Dollars)

Country	1979	1980	1981	1982	1983	1984
United States	$ 956.3	$1,097.5	$1,296.8	$1,340.7	$1,324.3	$1,390.8
West Germany	1,260.5	1,448.9	1,294.6	1,261.8	1,264.0	1,241.9
United Kingdom	862.0	1,062.2	1,000.5	940.5	900.4	974.3
France	682.7	755.6	752.5	601.8	613.4	521.3
Italy	527.8	550.7	470.3	451.6	410.0	420.8
Netherlands	364.6	402.1	348.8	364.1	349.7	356.9
Belgium and Luxembourg	342.7	382.7	334.5	317.1	326.5	331.7
Canada	135.8	185.9	190.0	211.4	304.3	320.7
Japan	134.3	203.7	221.5	211.9	238.9	301.0
Spain	386.9	444.2	401.0	413.5	265.5	265.4

Source: United Nations

TABLE 3: EMPLOYMENT GROWTH IN THE PRINTING AND PUBLISHING INDUSTRIES, 1984-1995

Sector	All Employees (thous.) Actual 1984	Projected 1995	Average Annual Growth
Printing and Publishing	1,372	1,751	2.2 percent
Newspaper Printing and Publishing	441	548	2.0 percent
Periodical and Book Printing and Publishing	209	313	3.7 percent
Other Printing and Publishing	723	890	1.9 percent
ALL MANUFACTURING	19,412	21,124	0.8 percent

Source: U.S. Department of Labor, Termination of the Manufacturing Clause: an Analysis of Potential Employment Effects, 1986.

STATEMENT OF

SECRETARY OF COMMERCE MALCOLM BALDRIGE

BEFORE THE

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 26, 1986

Mr. Chairman, I am pleased to be here today to discuss H.R. 4696, a bill to extend the manufacturing clause. The manufacturing clause denies copyright protection to U.S. authors unless they have their books, with certain exceptions, printed in the United States or in Canada. It also applies to newspapers, periodicals and newsletters. It is blatantly protectionist.

The Administration opposes any bill that allows the manufacturing clause to remain on the books beyond its scheduled expiration date of June 30. I will recommend to the President that he veto this or any other bill that extends it.

Let's remember why the manufacturing clause became part of our law. From 1790, when our first copyright law was passed, until the end of the 19th century, the United States provided no copyright protection to foreign authors. These authors, particularly British authors of the Victorian era, were enormously popular with American audiences. Without copyright protection, their works were freely copied and distributed. Few, if any, royalties were ever paid.

U.S. authors suffered too. As long as the Victorian writers were popular and their works could be reproduced without paying royalties, printers and publishers had little incentive to take chances on native writers who were not well-known. As a result, the development of American literature suffered.

Things got so bad that the old Senate Committee on Patents was forced to admit, as far back as 1888, that the United States had become the "Barbary Coast of literature." In 1891 Congress finally got around to correcting this injustice by amending the copyright law to permit foreign nationals to obtain copyright protection in the United States. The price of the printers' agreement was a new requirement that all copyrighted books be made from plates that were typeset in the United States.

In short, the manufacturing clause was little more than compensation for taking away from the printing industry its opportunity to get something for nothing. We have long since repaid whatever debt we owed for permission to extend copyright protection to foreign authors.

The clause has been scaled back considerably since 1891. Its defenders have usually predicted that all sorts of calamities would follow. In 1954, for example, we exempted all works of foreign authorship from the manufacturing requirement to meet the requirements of the Universal Copyright Convention. The printing unions and book manufacturers fought this on the ground that many cheap foreign works would flood the U.S. market. That fear never materialized.

The debate over the clause goes on and on. When Congress revised the Copyright Law in 1976, an exasperated House Judiciary Committee reported that "there is no justification on principle for a manufacturing requirement in the copyright statute, and although there may have been some economic justification for it at

one time, that justification no longer exists." I know of nothing that has happened in the last ten years that contradicts that assessment. My only quarrel with it is that I am not sure there was ever an economic justification for it in the first place.

Today the clause is an embarrassment to the United States as it tries to persuade other countries to protect our intellectual property.

For years we have struggled to encourage other nations to protect American patents, copyrights and trademarks. Many have inadequate laws or just don't enforce the ones they do have. Some impose intolerable licensing requirements. Adequate protection is not just a matter of fairness. To some degree, it is a matter of survival. In the coming years we will depend more and more on America's creative people for the new products, services and technological developments we will need to compete in world markets.

American inventors, authors and artists, and those who take the risks of bringing new products and services to the market look at these countries in the same way British authors and their publishers must have looked at us so long ago. We express shock and outrage, just as they did, that nations can fail to protect foreigners' intellectual property rights. We tell them to resist the special interests that have prospered from the lack of protection, such as copyright pirates and trademark counterfeiters, and pass tough laws.

Some of these countries are only just emerging from an agrarian past and striving to achieve rapid industrialization. They believe that lack of protection means jobs for their people and revenue for their treasuries. Ironically, we expect them to stand up to domestic interests resisting change when we are unable to do the same.

Continuation of the clause could jeopardize our negotiations with countries such as Korea, Taiwan, Malaysia, Singapore, Thailand, and Indonesia, all of whom we are encouraging to modernize their copyright laws. Several of these countries have pointed to the clause, either to assure themselves of an exemption from it or to use it as a justification for their own protectionist statutes.

The problems don't stop there. The 1982 continuation of the clause was found to be a direct violation of GATT. Another continuation will almost certainly force the European Community to exercise its right to retaliate.

I have no sympathy with those who say that we should not have accepted the GATT Panel's finding. I have three reasons for saying this: First, I have respect for the GATT itself and its procedures. Second, the GATT opinion makes considerable sense. Third, we need the GATT to achieve a number of intellectual property initiatives and can ill-afford to ignore it.

The clause represented a tough issue for GATT. The U.S. never claimed that the clause was consistent with the General Agreement. But, because it was on our books in 1947 when GATT was founded, it was properly grandfathered. In 1976 the U.S. Congress voluntarily added to the clause an expiration date of 1982. The issue which the GATT examined was the technical question of whether the 1982 extension of the manufacturing clause amounted to "new" legislation which had to be GATT-consistent. This may sound like a problem that only lawyers could love, but it involves some fundamental issues as to what the GATT is all about.

As the GATT Panel recognized, one of the basic aims of GATT is to encourage "security and predictability in trade relations among

contracting parties." This means that when a nation takes action it doesn't have to do - such as when it changes its policy to bring a grandfathered statute into closer conformity with GATT - other nations have the right to rely on those actions. In other words, countries cannot signal that they will follow one policy and then freely reverse course. In fact, both the U.S. and the European Community based their strategies during the 1979 multilateral trade negotiations on the assumption that the clause would expire in 1982.

The final point about GATT is simply this: Encouraging respect for the GATT process has particular relevance to intellectual property. The Administration wants to include intellectual property issues in the new round of trade negotiations. We were pleased with the President's success in Tokyo on this score. There are many issues that have to be dealt with in a trade context: Are patent and copyright terms long enough? Are pharmaceuticals, agricultural chemicals and other commercially important goods patentable? Is computer software given full copyright protection? Must a patent be licensed? Are semiconductor chips adequately protected? How do we settle intellectual property disputes among nations?

Our aim is to negotiate a comprehensive agreement on intellectual property rights under the GATT that will resolve these and other problems. Under these circumstances, we should not be ignoring legitimate GATT procedures, particularly for the sake of a large, efficient, healthy, and competitive printing industry.

About [illegible],000 people worked in book printing in 1984. This is about one-tenth of total printing employment. Overall printing employment is growing by about 13,500 jobs each year. Even so, printers still claim they need this protection though the clause probably shelters only a few jobs at most.

At Congress' request, the Labor Department performed a study of the potential effects on employment should the clause be terminated. The Labor Department considered such factors as cost of materials here and elsewhere, labor cost differentials, the importance of timeliness, and transportation costs, and concluded that no more than 23,500 job opportunities would be lost. This is a liberal estimate and assumes that many job opportunities in publishing would be lost. This is unlikely. If more conservative assumptions are used, Labor concluded that the figure might be as low as 900. I should add that Labor correctly noted that when an industry is healthy and able to generate new jobs, a lost job opportunity does not necessarily mean a lost job.

Other studies say much the same. The International Trade Commission concluded that only about 1400 to 6850 job opportunities would be lost in the U.S. printing and allied industries and that domestic firms would, in the long run, regain their lost sales as technological advances diminished foreign labor-cost advantages. The Congressional Research Service also issued a report discounting the printing industry's allegations of severe economic dislocation.

The reasons are not all that complicated. There are many factors that go into a publisher's decision on whether to have the work printed here or abroad. Labor costs are no more than twenty percent of the total cost of printing books covered by the clause, according to the ITC's survey of book printers. It is overly simplistic to assume that the cheapness of foreign labor will always govern. Time is often essential. Transporting the works by ocean shipping can be expensive. Paper, which is the largest element of cost, is cheaper here. Such factors can, and often do, outweigh the small foreign labor cost differential.

In short, if members of Congress are sincerely worried that termination of the clause may mean lost jobs, they would do better to transfer their concerns to the industries targeted for retaliation. Ambassador Yeutter will describe these industries and the communities in which they are located.

In conclusion, Mr. Chairman, for years intellectual property issues were dismissed as hopelessly technical and of little interest beyond certain academic circles. Today almost everyone understands what is at stake and recognizes the important connection between intellectual property and international trade policies. The Senators who dissented from the Senate Judiciary Committee's Report on the Senate bill, S. 1822, said it very well:

> "The manufacturing clause walls American authors into isolation, walls American business out of the international trading system, and gives offense to those who should be our allies in both trade and copyright. It should be allowed to expire."

Thank you, Mr. Chairman. I will be pleased to answer any questions the Committee may have.

STATEMENT OF ARTHUR C. PRINE, JR.
VICE PRESIDENT-CORPORATE RELATIONS
R. R. DONNELLEY & SONS COMPANY
CHICAGO, ILLINIOS

I am Arthur C. Prine, Jr., Vice President of R. R. Donnelley & Sons Company, which has its headquarters in Chicago, Illinois. My company is the largest printer in the United States, with some 20 plants in 14 locations across the country. We also are the third largest printer in England. I am testifying today on behalf of the Book Manufacturers' Institute and the Printing Industries of America.

We are here today to support H.R.4696. At the threshold we should recognize four fundamental points —

I. The True Nature of H.R.4696 — H.R.4696 is entirely different from what used to be known as the "Manufacturing Clause." This new Bill is designed to phase out the Manufacturing Clause and to promote effective free trade on an equitable and reciprocal basis. Since E.C. countries should gain early certification, there should be no reason for E.C. retaliation.

II. Implications of Terminating the Clause — Any other approach to dismantling the old Manufacturing Clause carries extremely serious implications for the Printing Industry, our nations sixth largest industry in terms of jobs.

III. U.S. Printers Trying to Sell in Other Countries Are Faced With a Vast Array of Trade Barriers — In attempting to sell U.S. printed products into other countries we are faced with a vast array of tariff and non-tariff barriers, as well as wholesale intellectual piracy that undermines U.S. production.

IV. Unilateral Trade Disarmament — Over the years, and particularly in the last 10 years, Manufacturing Clause coverage has been whittled down while foreign governments have done virtually nothing to move toward free trade in printing. Simply stated, in printing we in the United States have been engaged in unilateral trade disarmament.

The history of the last ten years proves conclusively that when we unilaterally surrender our position, foreign governments gleefully accept the fruits, give us a lot of happy talk, and leave their own barriers in place. As we have surrendered much of the Manufacturing Clause over the last ten years, foreign printing trade barriers have worsened. We know of not one case in which our government has succeeded in eliminating or significantly reducing even one foreign printing trade barrier.

Dealing with each of these four fundamental points —

I. THE TRUE NATURE OF H.R.4696

H.R.4696 is carefully designed to promote the cause of free trade. H.R.4696 bears no resemblance to the Manufacturing Clause as we have known it for some 95 years.

We in the printing industry are willing to phase out the Manufacturing Clause. We are willing to take our chances in the international waters of free trade. But we want to have a chance to sell our products abroad; we want equal access. And so we support H.R.4696, which will phase out the Manufacturing Clause on a country by country basis as the S.T.R. determines that we have roughly equivalent access.

Since we expect E.C. countries to gain early certification, there should be little if any reason for GATT retaliation.

Enemies of H.R.4696 have also suggested that it might present some problem if the United States seeks to join the Berne Convention. But the Register of Copyrights has already testified that he saw this Bill as presenting no real problems to U.S. accession to the Berne Convention.

And so as we strip away the undergrowth and get down to bedrock, we see

- that H.R.4696 is in no way "protectionist" legislation, but is instead designed to phase out the Manufacturing Clause and help promote Free trade,
- that the threat of E.C. retaliation is without real substance, and
- that so-called Berne problems are also without substance.

II. IMPLICATIONS OF TERMINATING THE CLAUSE

A. Industry Based on Clause -- Over many years a large and important industry has developed in reliance on the continued existence of the Manufacturing Clause. The Manufacturing Clause has been a part of U.S. law for more than 95 years. Since it was introduced in 1891, thousands of companies have come into existence, so that today our industry is the nation's largest in number of establishments; billions of dollars have been invested; and hundreds of thousands of jobs have been created, so that our industry is the nation's sixth largest in terms of jobs.

Although the provisions of the Clause have been progressively narrowed over the years so that it is not nearly as extensive as it was, it remains a cornerstone of our industry.

When first introduced in 1891, the Manufacturing Clause provided that for all practical purposes no one was entitled to U.S. copyright protection unless the printed product was manufactured in this country. Simply stated domestic manufacture was established as a condition for granting copyright monopoly in practically all of what was then copyrightable.

In general, the history of the Clause coverage in the past 95 years has been one of continuing erosion, to a small extent by the Copyright Act of 1905, and further by adoption of the U.C.C. and ad interim copyright provisions in 1954, but drastically and dramatically by the 1976 law, all as shown on Table I.

TABLE I -- Manufacturing Clause coverage comparison: 1891 versus today

1891	Today
Virtually all copyrightable materials	Preponderantly nondramatic literary copyrightable materials.
All languages	English language only.
All authors	U.S. authors domiciled in United States only
Whole printing process (typesetting, all preliminary steps, platemaking printing, and binding) in United States.	All typesetting and other preliminary steps to platemaking for lithographic printing may be done abroad.
Printed in United States only	May also be printed in Canada.

As can be seen from the Table, the Manufacturing Clause is far from what it once was. It is still, however, extremely important to the companies, the investors, and the working people whose jobs are keyed to the health and vitality of our industry.

B. Printing Industry Is Unusually Vulnerable to Wage Rate Differentials -- Printing is a highly labor intensive industry. Even though the U.S. printing industry is a leader in automation, much of printing is labor intensive. Precise figures are not available, but we think we may well be the most highly labor intensive of any major manufacturing industry in the United States. This means the wage differentials between us and low wage rate countries, such as Hong Kong and Singapore, are much more destructive to printing than to most other manufacturing industries.

It has been suggested by some that the United States should move out of labor intensive manufacturing industries, like printing, and concentrate on high technology industries where high American wage

rates can be supported. This may be very nice economic theory, but it does not make very nice listening for manufacturers and for workers and their families in the labor intensive industries who are sacrificed in the name of long-range economic theory.

C. Job Loss — If the Manufacturing Clause simply expires while all other countries continue in their present mode, we believe that many thousands of jobs will be lost to foreign competitors who benefit from various kinds of government support and low wage rates in a labor intensive industry.

Exactly how many jobs would be lost? There have been two studies prepared by the Department of Labor. One lays our four scenarios and concludes with figures ranging from 900 to 23,300 jobs; the other concludes that total job loss, reaching into supplier industries as well as into printing itself, might well reach as high as 367,000. The International Trading Commission estimates 1,400 to 6,850.

In my opinion the reliability of these studies and estimates is seriously undermined, not only by the bias of the conducting agencies, but also by a misunderstanding caused by the absence of long run production facilities in other parts of the World. It does little good to analyze foreign printing cost and pricing levels today when we know that production facilities would change dramatically if the Manufacturing Clause died. If the Manufacturing Clause expires, we would expect Japanese and other printers to establish new state-of-the-art facilities in the Pacific Basin. Accordingly, we think it clear that current price and cost analyses are not an accurate forecast for the future. Suffice it to say, that we who sell printing for our daily bread are deeply concerned. Our presence here today reflects that concern. We are convinced that many thousands of jobs would be lost.

D. Impact on Small Business -- Even though printing is one of our nation's largest industries, most of the companies are small. If the Manufacturing Clause expires, we believe the economic impact of this lost business would fall most heavily on small business. We at R. R. Donnelley are doing everything we can to maintain the vitality of the U.S. Printing Industry; we are doing everything we can to keep these jobs in the United States. But if the Manufacturing Clause expires, if you force us to export our business, if you force us to send jobs overseas, we are prepared to do so. We are large; we are well-staffed; we have the necessary manufacturing and technical resources; and we are well financed.

But most companies in the printing industry are not. It is on this multitude of small businesses that the blow would fall most heavily. Many small businesses will neither be able to compete with Far East plants, nor have the resources to move there. They, and their employees, will bear the consequences in harshest terms.

III. U.S. PRINTERS TRYING TO SELL IN OTHER COUNTRIES ARE FACED WITH A VAST ARRAY OF TRADE BARRIERS

A. With the U.S. a signatory to the Florence Agreement (obligating us not to place tariffs on educational and cultural materials), the Manufacturing Clause is the only trade protection the printing industry has.

On the other hand, as we try to sell printing in other countries we are faced with monstrous trade barriers.

1. A wide range of non-tariff barriers, probably more than we know
2. Wholesale piracy in the Pacific Basin
3. In Canada, a 30% tariff on catalogs, and a 25% tariff on advertising materials and printed matter
4. Also in Canada discriminatory mail rates, advertising content restrictions, and special tax code restrictions, all designed to prohibit or discourage sale of U.S. magazines in Canada.

IV. UNILATERAL TRADE DISARMAMENT

Looking back over the last ten years I cannot think of one case in which our government has succeeded in eliminating, or significantly reducing even one foreign printing trade barrier. From the standpoint of our industry at least, it appears that virtually all of our government's efforts have been aimed at eliminating what's left of the Manufacturing Clause. One must wonder how much more the cause of free trade would have been served if our own government had pursued with equal vigor the task of encouraging foreign governments to pull down their many barriers.

We believe that one reason why our own government has been so ineffective in dealing with foreign printing trade barriers is that for the last nine years the Manufacturing Clause has been scheduled to terminate -- first in mid-1982 and now in mid 1986. With the Manufacturing Clause scheduled to end automatically, foreign countries have had little or no incentive to bring down their own trade barriers. The attitude of these other countries appears to be, "Good! The last remaining U.S. printing trade barrier is going to expire automatically. Let's leave all of our trade barriers intact. Let's do nothing about shutting down the wholesale intellectual piracy that undermines U.S. production of copyrighted materials. Let's get ready to pick up the spoils."

In the case of Canada the record is particularly bad. As explained in Attachment "A" (CANADA AND THE TORONTO AGREEMENT), printing unions, manufacturers, and publishers on both sides of the border entered into a written agreement, signed in Toronto in 1968, to eliminate printing trade barriers. We in the United States honored our commitment by sponsoring and obtaining a Manufacturing Clause exemption for Canada. As can be seen from the list of Canadian trade barriers cited above, the Canadian record is not nearly so satisfactory.

When the Congress granted the Canadian Manufacturing Clause exemption in 1976, the final Conference Committee Report stated that the Canadian exemption was included with the expectation that Canada would move promptly "...to remove high Canadian tariffs on printed matter and other Canadian restraints on the printing and publishing trade between the two countries..." The Canadian exemption is included in Section 601 with the expectation that these changes will be made. If for any reason Canadian trade groups and the Canadian Government do not move promptly in reciprocation with U.S. trade groups and the United States Government to remove such tariffs and other trade barriers, we would expect Congress to act in conformance with its 1976 Conference Committee Report.

THE DILEMMA

And so we are faced with a dilemma. Over the years, piece by piece, we have reduced the coverage of Manufacturing Clause. In the last ten years alone, we have granted a complete exception to Canada; we have carved out a special exemption for lithographic typesetting and preliminary work so that this work could be done abroad; and we have further narrowed the coverage of the clause so that today it applies only to "preponderantly, non-dramatic literary material." (This last change among other things has permitted publishers to move a wide variety of picture books overseas.)

All of these reductions in the last ten years have been made in the name of free trade...in hope that foreign countries would reciprocate by reducing or eliminating their own printing trade barriers. Shall we continue on this reckless course of unilateral disarmament? Shall we ignore the lessons of the last ten years? Shall we give up what little we have left in the blind, naive hope that our foreign trading partners will see the light? Shall we stand by and watch U.S. jobs go overseas while foreign competitors gleefully pick up the spoils?

And will they pick up the spoils? We need look no further than Canada for an answer. Canada has enjoyed a full exemption to the Manufacturing Clause for a little over nine years. During the last ten years Canadian book shipments into the U.S. have increased by 537% while our shipments into Canada have increased by only 37%. Canadian Catalog shipments into the U.S. have increased by more than ten times in the last ten years and are today six times greater than our shipments to Canada. Is it any wonder our overall U.S. Trading deficit with Canada is second only to Japan? The Department of Commerce has estimated that Canadian printing trade barriers are costing us some $350 million a year.

If Canada can do that with relatively high wage rates, think what will happen if Japanese know-how is merged with Pacific basin wage rates.

H.R.4696 - THE SOLUTION

Even though the Manufacturing Clause is shot through with holes, it remains the only weapon in our trade arsenal. Clearly, it should not be surrendered without our receiving something in return. Accordingly, we support H.R.4696. Retain the Manufacturing Clause, but provide exceptions on a country by country basis. In this way the Manufacturing Clause becomes an instrument of free trade.

We recognize one weakness in H.R.4696, namely, it does not cover tariff barriers. This omission is intentional and has been made in deference to the S.T.R., since we assume that tariff reduction negotiations should be carried out under the GATT. We say this despite the fact that the highest printing tariffs imposed by the U.S. will be only 1.8% at the end of the Tokyo Round reductions, while Canada, as an example, now assesses a 30.5% tariff on catalogs and a 25.9% tariff on advertising materials and printed matter, which is up anout 40 to 50% from the start of the Tokyo Round. This increase by Canada was made without objection from our government.

CONCLUSION

We are not an industry trying to hide behind protectionist legislation. We have been cooperating in the peicemeal removal of U.S. printing trade barriers. And now we are prepared to support the removal of the last piece of protection...provided we can get some kind of roughly equal access to foreign markets. We are prepared to meet the foreign challenge. But we want equal access.

Santayana told us that those who do not study the lessons of history are doomed to relive them. As we study the lessons of the last ten years it is very clear that if we do not retain the Manufacturing Clause as a bargaining chip in dealing with foreign governments, we are going to end up with no protection here and still be faced with horrendous trade barriers in our efforts to sell into other countries. H.R.4696 will in all probability result in the loss of quite a few jobs in the United States. But it will at least give us some offset, assuming that as we dismantle the Manufacturing Clause, our trading partners will be required to dismantle their barriers. With equal access we would expect to save many of these jobs.

It is therefore, with considerable pride that we support H.R.4696.

TESTIMONY OF JOHN M. GREER, VICE PRESIDENT

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION

BEFORE THE HOUSE WAYS AND MEANS COMMITTEE

SUBCOMMITTEE ON TRADE

HEARINGS ON H.R. 4696 TO AMEND THE MANUFACTURING CLAUSE

OF THE COPYRIGHT LAW

June 26, 1986

BACKGROUND

Mr. Chairman, I am John M. Greer, Vice President of the Graphic Communications International Union, an affiliate of the AFL-CIO. I am testifying today on behalf of the 200,000 members of the G.C.I.U., as well as the membership of the Newspaper Guild.

I am appearing today to testify in favor of H.R. 4696, a bill which will extend the Manufacturing Clause of the Copyright Act beyond July 1, 1986.

For 95 years, the Manufacturing Clause of the Copyright Act has required that most printed material of a preponderantly non-dramatic literary nature and written in the English language by an American author or by an author domiciled in the United States must be printed in either the United States or Canada in order to enjoy the full and unqualified protection of the U.S. copyright laws.

H.R. 4696 - with the bipartisan support of 148 cosponsors- differs from present law in that it will extend the Manufacturing Clause while allowing the U.S. Trade Representative and the Secretary of Labor to exempt countries from the Manufacturing Clause by certifying to Congress that the country: 1) extends full copyright protection to foreign nationals, 2) is a fair trading partner in printed goods, and 3) protects the basic rights of its workers as defined by the Trade Act of 1974.

The fresh approach embodied in H.R. 4696 assures not only the continued health and vitality of our domestic printing industry, but also establishes a unique mechanism to recognize and reward our true fair trading partners.

EMPLOYMENT EFFECTS OF THE MANUFACTURING CLAUSE

Since 1891, the Manufacturing Clause has been the trade law for the American printing industry. In this historic role, the Manufacturing Clause has encouraged the development of U.S. printing into the most productive, modern printing industry in the world. Our domestic printing industry employs 1.3 million hard-working men and women. The industry is also notable as our Nation's largest and most important sector of small manufacturers.

If the Manufacturing Clause is allowed to expire, the employment effect would be devastating. A 1981 U.S. Department of Labor study anticipated a loss of up to 172,000 jobs in the printing industry and a total loss of 367,000 job opportunities throughout our economy if the Manufacturing Clause expires. At a time when hundreds of thousands of jobs are already being lost in many of our most basic industries, we cannot afford to allow yet

another American industry be victimized by our rising trade deficit.

Even as I speak, unfair foreign printers are getting ready to penetrate our domestic market with their low-wage goods. Our Nation's printing market, with annual sales exceeding $100 billion, is the largest in the world. While our domestic industry currently dominates this market, the expiration of the Manufacturing Clause would dramatically and irreversibly reduce the amount of printed material manufactured by American workers.

In the absence of the Manufacturing Clause, large American printers could also begin offshore production of printed material in low-wage areas. In fact, in his 1981 testimony before this Subcommittee, Mr. Arthur Prine of R.R. Donnelly and Sons Co. testified that:

"We at R.R. Donnelly are doing everything we can to maintain the vitality of the U.S. Printing Industry; we are doing everything we can to keep these jobs in the United States. But if the Manufacturing Clause expires, if you force us to export our business, to send jobs overseas, we are prepared to do so. We do not want to export jobs, but if you force us to the wall we are prepared to move. We are large; we are well-staffed; we have the necessary manufacturing and technical resources; and we are well-financed. We can move overseas if you force us to do so."

Clearly, only the largest American printing companies have the ability to manufacture printed goods in low-wage countries to be sold in our domestic market. However, without the protection of the Manufacturing Clause, these companies - together with foreign printing companies - could soon control the domestic printing market.

Printing and communications technology are sufficiently advanced to allow increased mobility for foreign printers and for our Nation's largest printers. But while printing companies are increasingly mobile, American printing workers cannot follow their jobs to low-wage plants in the Pacific or Caribbean Basins. Clearly, if the Manufacturing Clause is allowed to expire, hard-working men and women will once again have to pay the heaviest price.

RESPONSE TO THE 1986 DEPARTMENT OF LABOR STUDY

Mr. Chairman, I am surprised that the Department of Labor is not here to discuss their flawed 1986 study which is quoted so often by other members of the Administration. As a labor official, I am disappointed to read a DOL study in which statistics have been sloppily and wrongfully manipulated to support a politically motivated goal.

The study purposefully chooses the most limited scenarios of job opportunity losses, almost totally ignores indirect job loss impacts, ignores the experience of increased printing imports from Canada (which is currently exempt from the Manufacturing Clause), ignores the potential loss of jobs to Mexico, and makes no effort to estimate the impact on investments in plant and equipment which would likely occur if the Manufacturing Clause were terminated.

For example, the DOL study [page 71] understates employment in book printing for 1982. The DOL figure is 28,000 while the Census of Manufacturers for the same year concludes the correct figure is 44,700. There is an apparent effort by DOL to downplay the employment impact of the Manufacturing Clause throughout its study by use of statistics which are erroneous.

The DOL study also notes that the printing and publishing industries have, overall, maintained a favorable balance of trade [DOL study, page 10]. However, Department of Commerce statistics indicate that this phenomenon is based on a surplus of exports of periodicals, books and pamphlets. The U.S. is currently experiencing a trade deficit with regard to newspapers, commercial printed matter and items which come under the heading of blankbooks and looseleaf binders.

When the Commerce figures are examined, they reveal a very significant conclusion. The U.S. is continuing to experience a trade surplus in the very areas that are clearly covered by the Manufacturing Clause. But, at the same time, we are suffering from a trade deficit with respect to those printed materials that are not covered by the Clause.

The DOL study also fails to note that the overall trade surplus in the printing and publishing industries is on a clear path of decline. According to Department of Commerce statistics, exports exceeded imports by 102 percent in 1982, 66 percent in 1983, and only 29 percent in 1984. For the first 10 months of 1985, the dollar value of book exports decreased by 6.3 percent while the dollar value of book imports increased by 14.5 percent. In terms of units of books, the U.S. became a net importer of books in 1983. Now, it appears the U.S. is about to become a net importer of books measured by dollar value, as well.

Regrettably, DOL attempts to downplay -- if not ignore -- this so-called indirect impact on printing establishments that produce bread wrappers as well as periodicals or books. The impact on a printing company (most of which are small businesses employing an average of 20 people) of a loss of book or periodical business will be far from indirect. Idle equipment translates not only into decreased productivity, but also decreased cash flow. And decreased cash flow can only serve to make it difficult to maintain current employment levels or make payments on equipment. This is a recipe for layoffs and/or business failure.

According to DOL, three-fourths of all newspapers and more than 98 percent of periodicals are printed on a weekly or less frequent basis [DOL study, pages 25 and 26]. DOL claims nevertheless that these materials would not be printed outside the U.S. if for no other reason than the press of last-minute advertising deadlines. Its contention is not supported by facts, nor by the reality of the modern world of satellite telecommunications and air transportation. [Note that, as with other even more bulky products than books -- such as automobiles from Japan -- the cost of transportation is not likely to deter even distant Pacific Basin countries from being able to make a major penetration of the U.S. market.]

Even DOL recognizes that books are more susceptible to being printed abroad. Its study notes the uncertainty of the potential of import penetration in this sector of the industry. However, it ignores the fact that state-of-the-art printing technology is already in place in many Pacific Basin countries and could easily be in place in the Caribbean Basin, as well. Thus, books ranging from low-quality paperbacks to high-quality hardbound books can be -- and are quite likely to be -- printed in low-wage countries and imported to the United States.

In fact, not one of DOL's scenarios includes any estimate of the loss of indirect job opportunities [DOL study, page 43]. However, based on a "more aggregated I-O [input-output] approach" the Department states that "total job opportunity losses inclusive of those which may occur outside of the printing and publishing industries" could be anywhere from 1,400 to 47,300 [DOL study, pages 44-45]. At the same time, DOL states

that: "However, offsetting export increases (within or outside of printing and publishing) may eliminate some or all of these job opportunity losses." Given present U.S. trade policies, it is incredible to argue that there will be offsetting export increases either within or outside of printing and publishing.

Clearly, the 1986 DOL study is so riddled with errors and misrepresentations that the analysis is worthless as a predictive tool. As a labor official, I can only hope that the DOL does not use this wrongful tactic on any future issue of such national significance.

SUMMARY OF THE GATT DECISION

The Administration has also been raising concerns about an adverse GATT ruling. A 1984 GATT panel, which was made up of representatives from Malaysia, India and Finland, ruled that the extension of the Manufacturing Clause could no longer be considered "existing legislation" subject to the "grandfathering" provisions of the GATT because Congress had attached a date to the extension of the Manufacturing Clause in 1976, and because Carter and Reagan trade officials had suggested to our trading partners that the Clause would not be extended in 1982.

Amazingly, the U.S. Trade Representative did not exercise our Nation's right to veto the findings of the panel. Because the GATT rules by consensus, the United States had the right to veto the GATT panel ruling. By his inaction, the USTR failed to represent the interests of the United States as expressed by the Congress in passage of the 1982 extension.

Now, the USTR and other Administration agencies hope that the adverse GATT ruling - which they caused to occur - is reason enough to require the termination of the Manufacturing Clause. They warn that U.S. industries will face retaliation if the Clause is extended. These claims are but a thin smokescreen to cover the fact that this administration objects to the very substance of the Manufacturing Clause. They know that the U.S. has far more serious GATT-related complaints against our trading partners which the Administration has pursued only with great reluctance - if at all.

On May 16, 1984, the General Agreement on Tariffs and Trade panel on the United States Manufacturing Clause recommended that the United States bring the Manufacturing Clause into line with its obligations under the General Agreement. This recommendation was based solely upon the Panel's determination that the European Communities were justified in their belief that the 1976 six-year extension of the Manufacturing Clause represented U.S. intent to abandon the Clause in 1982 and thus the 1982 extension was inconsistent with its obligations under GATT.

The adverse GATT recommendation is the result of the Panel's misunderstanding of the U.S. legislative process. The European Communities believed that, because the U.S. Congress extended the Manufacturing Clause in 1976 for a period of six years, Congress was providing some sort of signal that it intended to allow the expiration of the Manufacturing Clause. The USTR, however, argued that the Congress used the expiration date as a means of ensuring renewed debate on this important legislation (as it does with many other statutes which contain an expiration date).

The GATT recommendation also relied on alleged representations made by U.S. representatives to the Tokyo Round of trade negotiations in 1977 that the Manufacturing Clause would not be extended beyond its then-scheduled expiration during 1982. In response, the USTR noted that the European Communities could "reasonably have anticipated the possibility of action by the United States to extend the Manufacturing Clause" and that there

clearly was no quid pro quo discussed during the Tokyo Round in return for the understanding claimed by the European Communities.

Indeed, the USTR noted that the Conference Committee report accompanying the 1976 extension of the Manufacturing Clause noted that Congress was requesting more data from the Register of Copyrights to determine whether the continuation of this long-standing provision of law should be reassessed. Continuing, the USTR stated that, "The text of the letter to the Register of Copyrights had referred expressly to possible amendment of the copyright law to extend applicability of the Manufacturing Clause...." (emphasis added)

In sum, therefore, the GATT recommendation was based on the position that the U.S. had committed itself in 1976 to terminating the Manufacturing Clause. This ruling failed to consider the legislative history associated with the 1976 legislation, the lack of any European effort to achieve negotiated trade concessions related to the alleged anticipation of the Clause's expected termination in 1982, and an understanding of the U.S. legislative process. By consenting to the GATT ruling, the USTR failed to represent U.S. trade policy as set by the Congress and allowed the European Community to make exaggerated damage claims. We can only hope that the USTR will effectively represent the interests of our Nation during any future GATT sessions negotiating the size of settlements. I should add, however, that since we expect the Europeans to be certified under H.R. 4696, we see no legitimate reason for European retaliation.

THE BERNE CONVENTION

Also, Mr. Chairman, the Manufacturing Clause is not an impediment to signing the Berne Convention. Mr. Arpad Bogsch, the Executive Director of the World Intellectual Property Organization, which administers the Berne Convention, has stated that the Manufacturing Clause is probably not an obstacle to signing the Berne Convention. In Senate Judiciary Committee testimony last year, he said that the Berne Convention would not be interested in U.S. internal treatment of its authors and that the Clause has only a marginal effect on foreign authors. Clearly, the Manufacturing Clause is not the obstacle to signing the Berne Convention.

EFFECT OF THE MANUFACTURING CLAUSE ON THE COMPUTER INDUSTRY

In recent months, the computer industry has formed a coalition of business groups opposed to an extension of the Manufacturing Clause. The coalition argues that the Manufacturing Clause will hinder future intellectual property negotiations. This claim is made despite the fact that the Manufacturing Clause does not affect foreign authors and only affects a small segment of the intellectual property field.

The opposition of the computer industry is not surprising. Many computer firms do all or most of their manufacturing in countries which would not be certified under H.R. 4696. These countries often have significant trade barriers to U.S. goods, don't protect intellectual property, and have disgraceful records on basic workers rights. Not only do these computer firms manufacture their computers and components in these countries, but they also print manuals and other materials in these same countries. When these products are exported to the United States, the manuals are either in violation of the Manufacturing Clause or no copyright is claimed. If the Manufacturing Clause is allowed to expire, then the computer industry could manufacture its entire package overseas without concern over copyright protection.

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Business Week recently published a series of lengthy articles on the "Hollow Corporation," which is causing the deindustrialization of America. Many of the firms which are lobbying against extension of the Manufacturing Clause are quickly becoming hollow corporations, merely marketers of goods developed and manufactured overseas. Mr. Chairman, allowing the Manufacturing Clause to expire would only accelerate the hollowing of industrial America. While allowing the Manufacturing Clause to expire may be profitable for a few individual companies, American industry and American workers will suffer.

POSSIBLE COSTS TO THE U.S. GOVERNMENT

The expiration of the Manufacturing Clause would also exact a high cost from our Government. A Book Manufacturers Institute study has indicated that 60 percent of industry workers are either unskilled or semi-skilled workers. These workers would be among the first workers to be affected by job losses. These job losses would be even more tragic because the tight federal budget limits the funds available for unemployment compensation or job training if these workers lose their jobs.

In order to realize the extent of possible costs to the U.S. Government, the case of Australia may be instructive. Over a decade ago, Australia opened its markets to competition from low-wage Pacific Basin competitors. The Australian printing industry sustained such heavy losses that the Australian government now must provide a 33 percent direct subsidy for its printing industry.

We have no reason to suppose that our domestic printers would fare any better in competition with foreign printers or large U.S. printers operating overseas. Clearly, the United States Government cannot afford to follow the Australian example.

THE URGENT NEED TO EXTEND THE MANUFACTURING CLAUSE

As vice-president of an industrial union, I have joined in the fight for the survival of many of our Nation's most basic industries. One industry after another has been targeted and then destroyed by foreign manufacturers. The combination of unfair trade practices and the overvalued dollar has deprived millions of working men and women and their families of their livelihoods. I am determined that printing workers will not become the next victims.

I see no reason for our Nation to make yet another unilateral trade concession. This Administration does not prepare for nuclear arms negotiation sessions by scrapping our weapons programs. Why does it prepare for trade talks by dismantling our trade laws? Is this any way to negotiate a favorable agreement?

Mr. Chairman, I am convinced that allowing the Manufacturing Clause to expire would be a grave mistake. That would open the way for the destruction of our successful printing industry. The price for allowing the Manufacturing Clause to expire would be hundreds of thousands of U.S. jobs and hundreds of stricken communities. The price is simply not worth it. I therefore urge Congress to pass H.R. 4696 and retain the Manufacturing Clause of the Copyright Act.

TESTIMONY OF HOWARD D. SAMUEL, PRESIDENT

INDUSTRIAL UNION DEPARTMENT, AFL-CIO

BEFORE THE HOUSE WAYS & MEANS COMMITTEE

SUBCOMMITTEE ON TRADE

HEARINGS ON H.R. 4696 TO AMEND THE MANUFACTURING CLAUSE

OF THE COPYRIGHT LAW

June 26, 1986

BACKGROUND

Mr. Chairman, I am Howard D. Samuel, President of the Industrial Union Department of the AFL-CIO. I am testifying in general today on behalf of the 5 million Industrial Union Department members of the AFL-CIO and in particular on behalf of the graphic arts and printing unions affiliated with the AFL-CIO, which represent more than 400,000 members throughout the United States and Canada.

We urge this Subcommittee to support H.R. 4696, which will permit Congress to avoid the horrible mistake of allowing the Manufacturing Clause of the Copyright Act to expire on July 1, 1986.

Since 1891, the Manufacturing Clause of the Copyright Act has required that most material which is preponderantly of a non-dramatic literary nature and is written in English by an American author or by an author domiciled in the U.S. must be rinted in the U.S. or Canada in order to be entitled to the full and unqualified protection of U.S. copyright laws. H.R. 4696 will extend the long and successful history of the Manufacturing Clause.

H.R. 4696 differs from present law in that it will extend the Manufacturing Clause while allowing the U.S. Trade Representative and the Secretary of Labor to exempt countries from the Manufacturing Clause by certifying to Congress that the country: 1) extends full copyright protection to foreign nationals, 2) is a fair trading partner in printed goods, and 3) protects the basic rights of its workers as defined by the Trade Act of 1974.

The new approach embodied in H.R. 4696 assures not only the continued health and vitality of our domestic printing industry, but also establishes a unique mechanism to recognize and reward our true fair trading partners. In recent months, nearly 150 Members of Congress have cosponsored H.R. 4696.

REASONS FOR EXTENDING THE MANUFACTURING CLAUSE

1. Employment Impact - If the Manufacturing Clause is allowed to expire, many of the 1.3 million printing workers will feel the terrible effects of printing imports and job exports. In fact, a 1981 U.S. Department of Labor study found that the expiration of the Clause would cost 172,000 printing jobs and a total loss of 367,000 job opportunities throughout our economy. Although a seriously- flawed 1986 D.O.L. study contradicts these findings, our Nation should expect hundreds of thousands of newly unemployed workers if the Manufacturing Clause is allowed to expire.

A recent study of foreign printing conludes that the highly developed, but low wage, printing industries in Hong Kong, Malaysia and Singapore are already producing large quantities of printed material for the U.S. markets. In addition, printers in China, Indonesia, Thailand and Korea are also increasing their penetration of the U.S. market. If the Manufacturing Clause is allowed to expire, these low-wage countries will flood the U.S. with printed materials and cripple our domestic printing industry.

Furthermore, the jobs U.S. workers would lose would be borne largely by those least able to recover. A Book Manufacturers Institute study indicates that 60 percent of printing industry workers are either unskilled or semi-skilled workers. These workers would be the first victims of foreign competition.

What would happen to these workers? 367,000 lost job opportunities among unskilled and semiskilled workers would be a severe burden to our economy. Employment opportunities for these workers are limited and federal budget constraints restrict funds for unemployment compensation and job training.

In order to realize the extent of possible costs to the U.S. Government, the case of Australia may be instructive. Over a decade ago, Australia opened its markets to competition from low-wage Pacific Basin competitors. The Australian printing industry sustained such heavy losses that the Australian government now must provide a 33 percent direct subsidy for its printing industry.

We have no reason to suppose that our domestic printers would fare any better in competition with foreign printers or large U.S. printers operating overseas. Clearly, the United States Government cannot afford to follow the Australian example.

2. Loss of Small and Medium Printing Businesses - Despite its overall size, printing is our Nation's largest and most important sector of small manufacturers. Of the 50,000 printing businesses, three-fourths of the firms employ 20 or fewer workers. Clearly, small and medium printers comprise the backbone of the U.S. printing industry.

Because they do not have the resources to move their operations overseas and compete with foreign printers or large U.S. printers with overseas operations, tens of thousands of small- and medium-sized printing companies would be forced to close their doors if the Manufacturing Clause is allowed to expire.

3. Need for a Fair Trade Policy - The expiration of the Manufacturing Clause would be a unilateral trade concession which would undermine U.S. efforts to develop a fair trade policy. For 95 years, the Manufacturing Clause has been the trade law for the printing industry. Thus, expiration of the Manufacturing Clause would represent a significant break with American trade history. Equally important, it would place the U.S. printing industry at a competitive disadvantage when compared to the tariff and non-tariff barriers erected by our trading partners.

Although all signatories to the Florence Agreement are forbidden from placing tariffs on books and other cultural or educational printed products, tariffs on catalogs and other printed material are commonplace. For example, the European Economic Community tariff on catalogs currently stands at 6.6 percent. The Canadian tariff on catalogs is currently over 31 percent of the transactional value, scheduled for reduction to 28.6 percent by 1987.

In addition, many foreign nations have set up a maze of non-tariff barriers which severely restrict American exports. In contrast, the U.S. has virtually opened its doors wide to materials printed in foreign countries.

In recent months, the Reagan Administration has lobbied the Congress seeking to allow the Manufacturing Clause to expire. Their arguments have focused almost solely on an adverse GATT ruling on the Manufacturing Clause. The 1984 GATT panel, which was made up of representatives from Malaysia, India and Finland, ruled that because Congress had attached a date to the extension of the Manufacturing Clause in 1976, and because Carter and Reagan trade officials had suggested to our trading partners that the Clause would not be extended in 1982, that the extension of the Manufacturing Clause could no longer be considered "existing legislation" subject to the "grandfathering" provisions of GATT.

Amazingly, the USTR did not exercise our Nation's right to veto the findings of the panel. The United States had the right to veto the GATT panel ruling, but instead, the USTR gave away the store. By this inaction, the USTR failed to represent the interests of the United States as expressed by the Congress in passage of the 1982 extension.

Now, the USTR and other administration agencies have the gall to claim that the adverse GATT ruling is reason enough to require the termination of the Manufacturing Clause. They warn that U.S. industries will face retaliation if the Clause is extended. These claims are but a thin smokescreen to cover the fact that this administration objects to the very substance of the Manufacturing Clause. They know that the U.S. has far more serious GATT-related complaints against our trading partners. And they know that the administration has moved with snail's pace reluctance to pursue these complaints aggresively.

Unfair foreign trading practices have decimated major U.S. industries. The Manufacturing Clause is all that stands in the way of keeping unfair trade from crippling the U.S. printing industry.

Mr. Chairman, I hope you agree that the jobs of hundreds of thousands of printing workers should not be sacrificed because of the negligence of an Administration which refused to represent U.S. policy as expressed by Congress when it extended the Manufacturing Clause in 1976 and again in 1982.

4. Effects of the Overvalued Dollar - The worsening international trade situation clearly indicates that 1986 is the wrong time to allow the Manufacturing Clause to expire. The overvalued U.S. dollar has been a major factor in our ballooning trade deficit. It has contributed to heavy losses in U.S. manufacturing. In fact, up to 75 percent of our present trade deficit has been triggered by the overvalued dollar. Under these conditions, the printing industry, being labor-intensive, could expect catastrophic losses if the Clause is allowed to expire. Despite the recent improvements in the value of the dollar on world markets, it will take some time before these changes are reflected in the world marketplace.

FUTURE PROSPECTS FOR AMERICAN PRINTING WORKERS

The future prospects for American printing workers hinge upon what the Congress and the Administration do in the next few weeks. The fate of the printing industry and its workers depends upon the future of the Manufacturing Clause.

If the Manufacturing Clause is allowed to expire, the changes in American printing would be broad and sweeping.

Foreign printers would quickly flood the American market with printed material manufactured overseas. In addition, U.S. printers which presently have overseas operations could expand their overseas plants to print for the American market. Additional large U.S. printing companies could build overseas plants to take advantage of the wage differential. These plants might be able to move offshore, but U.S. workers would not move with them. Once again, we would be exporting American jobs and increasing our trade deficit through the importation of more printed materials.

Once these jobs are lost, we can never expect them to return. In the last several years, one important manufacturing industry after another has been crippled by imports. Millions of jobs have been lost. Thousands of factories have closed their gates. Worst of all, these industries and jobs do not return to our shores. When industries are lost, when jobs are lost, we should not await their return.

Mr. Chairman, the Manufacturing Clause is already written in such a way as to permit a significant amount of imports of printed materials. At a time when there has been a great deal of discussion about the U.S. having become a debtor nation for the first time since the early part of this century, it now appears that the U.S. also will become a "debtor book nation," importing more books in dollar value than it exports. If the Manufacturing Clause is allowed to expire, our position in the world economy as a debtor nation will be both hastened and solidified.

The action taken on H.R. 4696 will have an extraordinary impact on hundreds of thousands of hard-working American men and women. Therefore, I urge both this Subcommittee and the full House Ways & Means Committee to act swiftly in approving H.R. 4696, the extension of the Manufacturing Clause of the Copyright Act.

June 26, 1986

TESTIMONY OF

Reginald K. Brack, Jr., Group Vice President/Books Group
Time Incorporated

Before the Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives

Good Morning, Mr. Chairman. My name is Reginald K. Brack, Jr. and I am Group Vice President of Time Inc., and President and Chief Executive Officer of the Books Group of Time Incorporated. I am pleased to have the opportunity this morning to present to you and your colleagues Time Inc.'s views on the Manufacturing Clause of the Copyright Act. Mr. Chairman, Time Inc. believes that the Manufacturing Clause is irrelevant to decisions about where to print books and agrees with Secretary of State George Schultz who recently wrote that "the time has come to let the Manufacturing Clause become a part of our history."

Before discussing our substantive position, let me briefly describe for you our book publishing businesses. Time Inc. is the fourth largest book publisher in the country. Four publishing houses comprise the Books Group of Time Inc. Time-Life Books, located in Alexandria, Virginia, generally publishes series of books, ranging in topics from cooking to the Viet Nam War. Book-of-the-Month Club, in Camp Hill, Pennsylvania, is the oldest book club in the country. Little, Brown & Company of Boston, Massachusetts, is a publisher of trade and textbooks, with a proud one hundred fifty-year history. Oxmoor House, located in Birmingham, Alabama, is a leading regional publisher in the South. The Books Group is an important part of Time Inc., an information and entertainment company that also publishes magazines, provides cable programming and is one of the largest multiple-system cable television operators in the country.

Time Incorporated opposes the Manufacturing Clause for a variety of reasons, but not the one that motivates American printers and their unions to oppose expiration. Our friends in the printing industry will not lose substantial amounts of business if the Manufacturing Clause expires, for reasons I will explain below.

Our business reasons for opposing extension of the Manufacturing Clause are primarily two: (1) it impedes the efforts of the United States to expand and enforce copyright rights around the world; and (2) it is a substantial part of the justification by the Canadians for reimposition of their 10% books tariff, as well as a major irritant to the smooth negotiation of an entire constellation of interrelated intellectual property and investment/market access issues with Canada.

With respect to international piracy, this is a significant concern for us, especially for the professional textbooks printed by Little, Brown. The actual and potential lost sales from piracy are substantial and growing.

With respect to Canada, the new books tariff has a direct and substantial impact on all of our publishing houses with the exception of Oxmoor House. We trust that eliminating the Manufacturing Clause will lead the Canadians to consider appropriate reciprocal gestures, such as reexamining their tariff. Such an exchange would be invaluable in cooling off the current level of trade tension between the U.S. and Canada, and might lead to a better negotiating climate.

The multinational nature of all of our businesses, including books, has long since demonstrated to Time Inc. that free trade is essential to a healthy world -- and American -- economy. We have seen many examples of the harmful effects of protectionism over the years. Let me give you a current example. Right now, in Taiwan, our book sales are off more than 50% because of protectionist tariffs: the people cannot afford to buy our books. A protectionist spiral could be devastating to the U.S.

The U.S. must help lead the way, out of enlightened self-interest for free trade throughout the world, for we have much to lose. And this applies with special force to the cornerstone of all our trading relationships -- that is, with Canada. If we remove the Manufacturing Clause and they respond, it will help clear the way to an agreement that could set a constructive free trade standard for the rest of the world.

The Manufacturing Clause is Not in the Public Interest

We also oppose extension of the Manufacturing Clause because we believe it is not in the public interest. Among other things, the Manufacturing Clause has been formally declared in violation of the General Agreement on Tariffs and Trade, thus placing the United States in breach of a major international treaty obligation. Not only does it place representatives of the United States in a most difficult position in negotiations concerning any GATT adherence matter, it also compounds the difficulties on international intellectual property rights enforcement efforts by removing the GATT -- and the possibility of prospective adoption within it of an intellectual property regime -- from the field of play.

Violation of the GATT by the U.S. has provoked a serious and credible threat of retaliation from the European Community not only in printing, but in other industries such as tobacco, chemicals and paper, which would harm U.S. exports and the economy generally. It's been estimated that retaliation could cost $300-$500 million in lost U.S. exports. As a result, there would be a serious loss of jobs.

The printers and their unions have argued that expiration of the Manufacturing Clause will cause a loss of jobs and business. We at Time Incorporated sympathize with our friends in the printing industry; we have no wish to cost them jobs or business. However, studies by both the Department of Labor and the International Trade Commission predict few printing job opportunities would be lost with expiration. And, in any event, any potential job or business loss must be weighed against the job and business loss that will result from retaliation. We believe American printers are a strong and vital industry, one that because of its quality, reliability and proximity to its customers no longer needs protection. After 95 years, it is not a vulnerable "infant" industry, it can stand on its own two feet.

But let me emphasize that we believe our printers should be playing on a level field. Just as they no longer need protection here, they should not be subject to unfair barriers overseas. We believe the United States should take steps under existing law (the Trade Act of 1974), starting with the survey of barriers that your sister committee in the Senate would ask of the United States Special Trade Representative, to remove barriers wherever they exist to free and fair trade in printing.

We are also sympathetic with the plight of authors generally and particularly those whom we publish. Among these are William Shirer, Herman Wouk, Arthur Schlesinger, Jr. and Henry Kissinger, along with many others perhaps lesser known but equally hurt. These authors, Americans all, are discriminated against by U.S. domestic law -- a result that would be laughable were it not so

serious. The minority views to the Senate Judiciary Committee report on the extension of the Manufacturing Clause comment that "the Manufacturing Clause walls American authors into isolation..." This state of affairs is appalling. The copyright rights of American authors should not be held hostage to a matter that is simply and directly one of trade. It has no business being in the Copyright Act.

The Manufacturing Clause is Irrelevant to Decisions on Where to Print

Mr. Chairman, the foregoing public policy reasons for eliminating the anachronistic and protectionist Manufacturing Clause are more than sufficient justification in and of themselves, in our view, for its expiration. But quite frankly, to us the most telling reason for eliminating the Manufacturing Clause is that it is simply irrelevant to basic business decisions on the printing of books. Market realities determine where books are printed, and it is market realities that demonstrate why the concerns of our friends in the printing industry are so misplaced.

The overriding factors in Time Inc.'s decision on where to print have to do with the inventory and warehousing of books. We must be prepared to respond to volatile demands for our books, to replenish inventory at relatively short notice. We keep a sharp eye trained on the amount of our inventory to ensure that it corresponds generally with demand, which results in our dealing with fluctuations often. We cannot afford to produce and warehouse a large supply of books on a gamble that demand always will peak; it sometimes does not. No company's balance sheet can sustain that kind of gross overplanning. Therefore, tremendous economic pressures are generated to turn over our inventory two-three times per year, with additional print runs for demand peaks. All of this requires that our printing remain in the United States.

Let me be more specific. It takes approximately four weeks to manufacture an average run for us of some 25-30,000 books. Because of their locations, our American printers can, with virtually no transportation time, get these books to our distribution points. Moreover, they often enter the books in the mail at their plants fresh off the print line. By contrast, it takes some six weeks to transport a shipment of books from Europe or the Far East to the United States, on top of the four-week manufacturing time. And then, there may be some additional transit time from the port of entry to our interior distribution points. The difference between four weeks and ten weeks in the availability of books is absolutely crucial to our marketing and distributing operations, and bottom line. The warehousing and production costs for sufficient books printed abroad to overcome the additional six-week lead time, again gambling on demand, would be simply prohibitive.

At this point, let me add a word about demand for our various books. We cannot always predict how popular a book or a series might be. We promote them through television and printed advertising, as well as through direct mail, and we rarely can predict with certitude when one might take off or flop. Hence, we must have the flexibility of low inventories and rapid access to additional print runs.

Although more than sufficient to be determinative on our print orders, inventory and warehousing are not the only reasons why our books are and will continue to be made in the U.S.A. Our American printers, R.R. Donnelley, Kreuger, Arcadia and others, have built an enviable record of quality and reliability. We trust them. They produce our books well and on time. We work closely with them, and any problems in production can be remedied

almost immediately. This close, longstanding working relationship gives us a degree of control that is essential in meeting deadlines and the bottom line.

Conversely, we would not have the same degree of control with overseas printers. The supply lines are simply too long. If there are production problems, they can't be fixed as fast; we cannot dispatch someone to the scene who will arrive that very day. Overseas printers simply have not earned the level of trust that our American printers deserve.

Replacing damaged books and assessing liability for them play a key role in analyzing comparative reliability between American and offshore printers. On those infrequent occasions when books printed here are damaged, we can ascertain right away whether it occurred during printing or transportation. Because of the qualitative difference in relationships and the vast distances involved, we simply do not have that capacity when our books are printed overseas. In such a case, we not only have to wait ten weeks for replacements, we must wrangle with companies and individuals we do not know well, of sometimes uneven reputation, to assess liability and to be made whole.

"Savings" from Printing Offshore are Illusory

Notwithstanding these most fundamental reasons, there are those who argue that the cost differential for printing overseas would simply make it too attractive for American publishers to afford to keep their printing here. Let us examine the facts. The average book published costs approximately $2.00 to produce in the United States. It is 30-50 cents per book less expensive overseas. That 30-50 cents is offset in part by freight and handling charges from Europe or Asia of 15-20 cents per book. The net saving per book then would be 10-35 cents, for an average of about a quarter.

Consider what these "savings" mean in real business world terms. If we were to attempt to anticipate demand (to avoid the time delay of printing overseas), we would have to print and warehouse, conservatively, some 600,000 extra books per year just for Time-Life Books. Each individual book costs approximately 4 cents to warehouse. That adds up to $24,000. But that must be added to the cost of producing the extra books, a total of some $1.2 million. Weighed against that total of $1.224 million would be a savings of $150,000 from printing 600,000 extra books, saving 25 cents a book, overseas. The more than million-dollar difference demonstrates the speciousness of this argument.

Moreover, one must factor into this equation the shifting fortunes of the dollar. With the dollar dropping, that 30-50 cents per book edge in production to overseas plants is being eroded. Hence, the differential calculated above in today's cycle of currency valuation no doubt is growing.

Perhaps the most effective rejoinder to those who claim that the American printing industry will be devastated by offshore competition if the Manufacturing Clause expires is that right now we could print many of our books overseas, but we don't. The Time Inc. Books Group publishes the works of many foreign authors who are exempt from the requirements of the Manufacturing Clause. For example, Little, Brown has published all of the books of John Fowles, including The Magus and The Collector, and has just published the new book by Robert Lacey, Ford: The Men and The Machine, which promises to be a best seller. Both authors are English, yet all the books are printed here. The same applies to some series, such as The Good Cook, created for Time-Life Books entirely by foreign contributors. Our newest series, The Enchanted World, is, in substantial part, authored by nationals and domiciliaries of foreign countries. In these two and all other cases, books for the American market are printed here. And

they are printed here for all the reasons I discussed above. The Manufacturing Clause, once again, simply is irrelevant to determining where to print; economic and marketing factors control that determination.

H.R. 4696 is Not the Solution

The Manufacturing Clause would not be made any more relevant were H.R. 4696 to be enacted. While not as bad as current law because its certification process could well forestall the impending retaliation of the EC, it would have no impact on our business decisions as to where to print. Moreover, from the standpoint of public policy, the U.S. still would be in violation of GATT, American authors still would be discriminated against and the printing industry still would be receiving protection that, in our view, it just doesn't need.

In conclusion, Mr. Chairman, I urge you and your colleagues to closely examine this issue and explode the myths surrounding it. The Manufacturing Clause is a dinosaur that once served a very worthy purpose, protecting a nascent American printing industry. But like the dinosaur, it has outlived its time and it should follow the dinosaur into extinction.

Thank you and I will be happy to answer any questions you may have.

STATEMENT OPPOSING H.R. 4696 BEFORE TRADE SUBCOMMITTEE, HOUSE WAYS AND MEANS COMMITTEE, REPRESENTATIVE SAM GIBBONS, CHAIR, BY MR. JOHN GALLMAN, PRESIDENT, ASSOCIATION OF AMERICAN UNIVERSITY PRESSES, JUNE 26, 1986

I am John Gallman, Director, Indiana University Press. I speak to you today as President of the Association of American University Presses (AAUP), a not-for-profit organization incorporated in the State of New York. AAUP represents 92 university presses in the United States, Canada, and elsewhere around the world. The majority of our members are in the United States and are distributed throughout the country in the Northeast, the South, the Southwest, the Far West, and the Midwest. Our parent institutions are public as well as private universities.

The goals of our association are "to encourage the dissemination of the fruits of research and to support university presses in their endeavor to make widely available the best of scholarly knowledge and the most important results of scholarly research."

The members of our association publish over 4000 books per year, or close to 10% of the total number of titles issued in the United States. We also publish numerous scholarly and scientific journals. Our books are specialized in nature, in some cases selling fewer than 1000 copies a year; yet a high percentage of them are the building blocks of knowledge in the sciences, social sciences, and humanities. Many of these titles require subsidies which we try to obtain from private and public sources, including the federal government.

The AAUP is amazed that the Manufacturing Clause of the Copyright Act (17 USC 601), which is due to expire on June 30 of this year, is being considered for extension. We are unanimously and unequivocally opposed to this clause. The economic history of this century, including the disastrous depression of the 1930s, has shown that protectionist legislation benefits no one. Legislation which leads to the protection of one industry to the detriment of others in the long run will hurt everyone. Surely we know by now that competition creates jobs and that protectionism and the loss of competitive edge leads to fewer jobs, recession, and depression.

Our Founding Fathers gave Congress the power to "promote the Progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." This statement in the Constitution lays the foundation for the protection of literary properties in our country. The Founders knew that incentives were necessary to authors as well as publishers in order to insure the widest possible distribution of written materials. It was to encourage the free flow of information and ideas that copyright came into existence. From our perspective, as the publishers of all of the major universities in this country, the issue is clearly between the desires of some printers to protect their jobs for a limited period of time as against the needs of authors, readers, publishers, students, and education generally.

Because of the complex and specialized nature of our publications, many of us seek to share costs by copublishing with overseas publishers. Frequently these arrangements are essential to publication. Legislation which stands in the way of importation via copublication of works by American authors will limit the availability of scientific and other material and/or lead to much higher costs. It makes it more difficult for us to do our job. Legislation which prohibits printing in foreign countries of specialized books will deny some of these books to American readers. The Manufacturing Clause has nothing to do with legitimate issues of copyright and does not belong in our Copyright Law.

It is my understanding as well that the clause violates the United States GATT obligations and, therefore, invites retaliation against other U.S. exports, that Canada has already proposed certain retaliations against the exclusion of Canada from the clause, that the printing industry itself does not need the clause as it is technologically competitive and supports the United States as a net exporter of printed products, and that the clause undermines the United States position against unfair and discriminatory trade practices.

To conclude: The Association of American University Presses sees no advantage in the further extension of the Manufacturing Clause and many disadvantages. We urge Congress not to extend it.

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University Press of New England
University of New Mexico Press
New York University Press
The University of North Carolina Press
Northeastern University Press
Northern Illinois University Press
University of Notre Dame Press
Ohio University Press
Ohio State University Press
University of Oklahoma Press
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STATEMENT OF
VICO E. HENRIQUES, PRESIDENT
COMPUTER AND BUSINESS EQUIPMENT
MANUFACTURERS ASSOCIATION

My name is Vico Henriques. I am president of the Computer and Business Equipment Manufacturers Association (CBEMA). CBEMA is the trade association of producers of information processing, business and communications products, supplies and services. Its 38 member companies had combined sales of more than $145 billion in 1985, representing 3.7% of our nation's gross national product. They employ more than 1.2 million people in the United States. In 1985, the U.S. computer and business equipment industry had exports of $16.270 billion and imports of $11.825 billion. The trade surplus was $4.445 billion.

I am here today to urge you, in the strongest possible terms, to reject retention of the Manufacturing Clause. There are two primary reasons. First, retention of the Clause has been declared illegal under the General Agreement on Tariffs and Trade (GATT). The European Community has already announced that, if the Clause is retained, it will retaliate; the effect would be serious damage to several U.S. industries in terms jeopardizing both jobs and revenues. Second, the Manufacturing Clause severely undermines efforts to secure adequate and effective international protection for intellectual property rights. Those rights are critical for our industry and for many others. Let me discuss both of those problems in more detail.

The Manufacturing Clause is illegal under the GATT. Using its existing dispute settlement procedures, the GATT has found the provision illegal under the terms of the agreement, and the U.S. has accepted this decision. As a consequence, the European Community has declared that, if the Clause is not permitted to expire as currently scheduled on June 30, it will retaliate against tobacco, paper, chemicals and machinery for making tobacco, chemicals, textiles and paper. The EC proposes increased tariffs or quotas that would cost U.S. industry between $300 and $500 million.

That retaliation doesn't simply mean lost revenues. It means lost jobs in industries that are otherwise healthy and competitive. We must not risk such a blow at our nation's economy.

The European Community is not the only member of the GATT that is free to retaliate because of the Manufacturing Clause. The retaliation proposed thus far by the European Community could be only the start of a series of actions against us by our trading partners. Additional industries, additional jobs could well be affected. Additional uncertainties are created as retaliatory threats are made and compensations negotiated. No competitive exporting industry is safe from the prospect of retaliation. Thus a vote for the Manufacturing Clause risks blows against competitive sectors in addition to those I just listed.

There is an even broader issue at stake here: the effectiveness of the GATT. The U.S. has two important broad objectives going into the next GATT round: improvement of the dispute settlement procedure and reduction or elimination of non-tariff barriers to trade. Retention of the Manufacturing Clause makes a mockery of both these objectives. Does it make sense to seek dispute settlement reform at the same time as the U.S. has been found to have violated GATT rules under the existing dispute settlement procedures? Does it make sense to retain a publicly acknowledged non-tariff barrier that violates the GATT and then insist that our trading partners give up theirs? Retention of the Manufacturing Clause severely undermines U.S. needs to strengthen the GATT. It provides our

trading partners with a convenient device to undermine and embarrass our negotiators as they seek to ensure the creation of an international marketplace that is open and fair.

Let me move to the second of our objections to the Manufacturing Clause: it seriously undermines our efforts to secure adequate and effective protection for intellectual property rights. To put this problem into perspective, let me review for a moment the importance of intellectual property to the computer and business equipment industry.

Like the products of most other manufacturers, ours are protected to a large degree by patents and trademark laws. But unlike most manufacturing sectors, we have an additional need for effective copyright enforcement to protect software. Unfortunately, copyright has been widely violated by foreign pirate companies that break security codes, copy software and sell it for a fraction of its U.S. market price. All too often, foreign governments have tolerated this international piracy by failing to enforce international copyright standards or by failing to have copyright protection at all.

Our government has been very supportive of our industry in attempting to negotiate an end to this problem. Intellectual property is on the U.S. agenda for the next GATT Round. The Administration is conducting bilateral negotiations in the area, which we strongly support.

I personally went on an intellectual property negotiating tour to the Far East with representatives from USTR. That trip is bearing fruit. Singapore has taken steps, however tentative, toward improving its copyright law. But, as Secretary of State George Schultz recently explained to Congressional leaders, "The Government of Singapore has indicated that it intends to link its efforts to improve copyright protection under a new copyright law--and the speed with which it fulfills its plan to join an international copyright convention--with the exemption of Singapore from the effect of the manufacturing clause."

By persisting with this Clause, we are handing our trading partners a weapon to be used against us. We provide them leverage with which they can slow down the process of providing adequate and effective intellectual property protection. And the problem extends far beyond Singapore--to Taiwan, to Brazil, to our negotiations with Korea in the ongoing 301 intellectual property negotiation.

An additional problem lies in the fact that we have not dealt our negotiators as strong a hand as we could to assist them in the difficult task of promoting adherence to international intellectual property rights, conventions and treaties. The reason is that we do not adhere to the Berne Copyright Convention.

We testified last month on the need for the U.S. to adhere to Berne. I will not repeat that testimony here. Suffice it to say that Berne provides a higher level of protection for copyright holders than the Universal Copyright Convention. Unfortunately, the Manufacturing Clause stands as an impediment to Berne adherence. It is ironic that a provision of our own copyright laws damages the opportunity for U.S. citizens and U.S. companies to receive greater copyright protection.

Thus far I have opposed the Manufacturing Clause because of the principles involved and because of the negative effect it will have on the U.S. economy. But before I end, I do want to mention an industry-specific problem with the Clause.

Our industry designs many products that are manufactured overseas. We ship

products directly to customers from those overseas locations. Customer satisfaction dictates that instructions on installing and operating those products arrive with the product. Unfortunately, the Manufacturing Clause stands in the way of meeting that customer demand.

The reason is simple. Most of the instructions are in fact originated in the United States. But we need to have the manuals printed at the point of manufacture because products change during the manufacturing process. A switch is moved from the right to the left side. A plug suddenly needs an adapter. Thus the manufacturing division must have the flexibility to change the manual; otherwise customers have no way of knowing how to install or operate the equipment.

The Manufacturing Clause presents us with several undesirable options in filling this need to have the product and the manual produced at the same place:

- Our first option is to print the manuals in the United States and ship them to the overseas location. If we print the manuals in advance, they are almost invariably incorrect. Alternatively, we could wait for the printing until the product is actually manufactured, undertaking a shipping delay of weeks or even months, while we print the manuals in the U.S. and ship them abroad. I'm sure you can understand that the time-critical nature of our industry means that we would lose a considerable number of sales if we undertook this procedure.

- A second possibility is that we could engage a foreign author to rewrite the manual. This would mean that we could print abroad and ship the manual into the U.S. with the product, since the Manufacturing Clause applies only to U.S.-authored works. Again, I think you can see how contrary to reasonable business practices this would be. Paying the authors to reconceive the manuals would be money down the drain. Errors would undoubtedly creep in, inconveniencing customers and forcing us to undertake additional servicing costs. Clearly this is not a solution.

- The third option is the one now being adopted by several of our companies--abandoning copyright. Unfortunately, this damages companies in the long run, since many parts of these manuals have intrinsic value. In addition, it impedes the discovery of pirated products, since pirated manuals are often part of the overall evidence used against those who have illegally copied our software or hardware.

I sincerely doubt that the U.S. Congress wants to punish an industry that is creating a major trade surplus by forcing us into the convoluted and damaging printing procedures demanded by the Manufacturing Clause. Amendments to the bill could alleviate the industry-specific problem, which we would like to discuss with your staff.

But no amount of amendment will make the Manufacturing Clause, in itself, acceptable to our industry. It is protectionist and stands in the way of our expanding trade. It is illegal under the GATT. It counters our efforts and the efforts of this Administration to gain effective international intellectual property protection for our products.

It is time to rid ourselves of the anachronism of the Manufacturing Clause and move forward into an approach to international trade that benefits the entire nation.

BEFORE THE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE
HOUSE OF REPRESENTATIVES

June 26, 1986

Statement of Irwin Karp, Counsel,
The Authors League of America, on

H.R. 4696: To Amend and Extend the
Manufacturing Clause of the Copyright Act

My name is Irwin Karp. I am counsel to The Authors League of America, the national society of professional authors, representing 14,000 writers and dramatists. The League's members who write non-dramatic literary works are the primary targets of the Manufacturing Clause, which will (by its terms) expire on July 1, 1986. The Authors League appreciates this opportunity to present its views on H.R. 1822, which would revise the Manufacturing Clause and freeze it permanently into the Copyright Act.

The Authors League opposes H.R. 4696 and urges Congress to reject any extension of the Manufacturing Clause and permit it to expire this summer.

I. Constitutional Objections

The Authors League believes that the Manufacturing Clause of the Copyright Act (Secs. 601 and 603 (a) and (c)) violates the First and Fifth Amendments, and the Patent and Copyright Clause of the Constitution (Art. I, Sec. 8, Cl. 8). A suit to have the Clause declared invalid on these grounds was filed by the League, the Association of American Publishers and me. The U.S. District Court ruled that the clause was constitutional. And a month ago that decision was affirmed by the U.S. Court of Appeals in New York. On May 20th the League, the AAP and I filed a petition for rehearing in banc; should the Court deny it, we will file a Petition for Certiorari.

The question of the Clause's constitutionality remains very much alive, and the Congress should consider carefully whether H.R.4696 will violate American authors and publishers First Amendment rights. In his concurring opinion, Judge Oakes said "the statute as applied may well in my opinion be unconstitutional but that he

> "would hold that the statute is not unconstitutional on its face and leave to another day the question whether it is unconstitutional - a day which with the expiration of the statute, will, hopefully, never come."
> Slip. Op. 3160 [emphasis added]

Proponents of H.R. 4696 who are concerned with protecting First Amendment rights will find scant comfort in the majority opinion by Judge Pratt (joined by Judge Winters). In its landmark decision in Lovell v. Griffin, 303 U.S. 444 (1938), the Supreme Court held that the right to distribute books "is as essential to that freedom [of the press] as liberty of publishing." The Manufacturing Clause flatly prohibits the distribution of an entire class of books by U.S. authors, and Judge Pratt conceded that the Court's decision could be read to prohibit government from thus "ban(ning) completely a particular form of distribution." But , he said,

> "the manufacturing clause would not offend this principle and thereby run afoul of the

> first amendment. This is because, under the regulation, if the author is willing to forego copyright protection, there is no restriction on free distribution of a foreign-manufactured work." Slip.Op. 3155 [emphasis added]

We believe that holding is barred by the First Amendment. In Harper & Row, Publishers v. Nation Enterprises , 105 S. Ct. 2218, 2230, the Supreme Court last year stressed that the draftsmen of the Constitution "intended copyright itself to be the engine of free expression", and cited several prior opinions in explaining that the purpose of copyright was to supply the economic foundation for creating and "disseminating" literary and other works. A ruling which forces authors to abandon copyright in order to distribute their works in a manner that cannot be barred for non-copyrighted works, deprives them of the very economic foundation (copyright) which the Constitution established as the "engine of free expression."

The Hobson's Choice offered to U.S. authors by Judge Pratt also is barred, we believe, by a long line of Supreme Court decisions which hold that Congress cannot condition the granting of a benefit, such as copyright, on the abandonment of a right guaranteed by the First Amendment -- e.g. the right to distribute foreign-made copies of a literary work, which Judge Pratt, in effect, conceded could not be barred for non-copyrighted works.

Judge Pratt, moreover, reached the startling conclusion that Supreme Court free speech decisions "do not, however, create any right to distribute and receive material that bears protection of the Copyright Act." Slip Op. 3155. On this theory the Copyright Act or other statutes could ban distribution of copyrighted books, newspapers, magazines, etc. that contained proscribed political, social or other expression the Supreme Court has held to be protected by the First Amendment; under Judge Pratt's opinion, that price of that protection would be the abandonment of copyright -- which in itself would severely impair or prevent publication by exposing authors and publishers to severe economic loss from infringement.

2. The Manufacturing Clause Is Unfair and Damaging To U.S. Authors

Extension of the Manufacturing Clause, by enacting H.R.4696, discriminates against U.S. authors and exposes them to serious injury. U.S. publishers can print a great number of different works abroad without violating the Clause. They can do so by choosing a foreign author, rather than a U.S. author, to write many of the books they decide to publish every year: non-fiction titles, textbooks, children's books, and many other categories. If the additional cost benefit exists, it is not difficult for large U.S. publishers to shift from U.S. to foreign authors to avoid the embargo of the Clause; these firms now issue books by American writers who live and work thousands of miles from their publishing headquarters, and by foreign authors all over the world. The victims of a permanent Manufacturing Clause would be U.S. authors, who will be placed at a severe disadvantage in their competition with foreign authors for the limited number of places on the annual publishing lists of U.S. publishing firms. U.S. authors will suffer. U.S. book manufacturers and their employees will not benefit -- they will not get the work.

3. The Manufacturing Clause Is Unjustified

The Manufacturing Clause imposes an unjustifiable burden on one class of U.S. citizens, authors of nondramatic literary works, to theoretically protect U.S. book manufacturers and their employees from foreign competition.

(a) The July, 1981 Copyright Office report demonstrated that U.S. publishers will not turn to foreign manufacturers to any significant extent, if the Clause is allowed to expire. pp. 132-134.

(b) That conclusion is now affirmed by the current Department of Labor study which negates the enormously exaggerated job-loss predictions of the 1981 Labor Department study.

(c) Other studies cited in the April 24, 1986 Department of Commerce memorandum also make it plain that the expiration of the manufacturing clause will not cause significant, or any, damage to printing-industry employees in the United States, or to the industry.

(d) Extension of the clause will not prevent foreign manufacture of the great preponderance of copyrighted "nondramatic literary works" by U.S. nationals, since these consist of commercial products, advertising, business forms, and other non-book materials, and most of this material relies so little on copyright protection that it would be made abroad if cost differentials warranted, even if that resulted in loss of copyright protection. The 1981 Department of Labor Report produced its inflated job loss estimates largely because it included manufacturing of these non-book materials.

4. Extension of the Manufacturing Clause Will Provoke Retaliation Abroad

As the Copyright Office noted, in its 1981 Report,

> "Alone among developed nations, and virtually alone in the world, the United States, by virtue of the manufacturing clause, controls international commerce in books by controlling the freedom of choice of some of its copyright owners."
>
> The means chosen by other nations to control (duties, quotas, licenses, exchange restrictions and the like) are costs for entrepreneurs to take into account when they consider where print their works; the manufacturing clause prevents certain U. S. copyright proprietors from even making such considerations." (p. 130)

As you know, the United States violated its obligations under GATT when Congress extended the manufacturing clause in 1982. A similar ruling, and an award of damages, is likely to follow any further extension. More important, the European Community has taken to heart the familiar American adage - "don't get mad, get even." If you pass H.R. 4696 and extend the manufacturing clause, the EC will retaliate against the U.S. industries on its recently-announced "hit list", banning hundreds of millions of dollars of imports of U.S. paper, tobacco, and machinery and chemicals. A vote for extending the manufacturing clause is not likely to save many domestic printing jobs, but it probably will cost many U.S. workers their jobs due to EC import bans imposed on American industries on the hit list. It should be noted that the ambiguous and clumsy 3-part certification procedure in H.R. 4696 does not save it from violating GATT or provoking the retaliatory EC embargo; or, in our view, from violating the First Amendment.

5. There Are Other Means of Protection

There are other means of protecting U.S. book manufacturers from unfair foreign competition without violating the constitutional rights of U.S. authors and subjecting them to an unfair and damaging embargo. The July 1981 Copyright Office Report said,

> "The death of the (manufacturing clause) will not leave

> American [book manufacturing] interests unfairly exposed to foreign competition. The ITC (International Trade Commission) can recommend and the President can impose duties, quotas and orderly marketing arrangements if imports harm American interests." (p. 131)

See also the 1982 testimony of Assistant Register of Copyrights Anthony Harrison, before the Ways and Means Committee (5/27/82) Serial 97-56, at pp. 22-23.

6. If Manufacturing Clauses Are a Fair and Effective Weapon Why Stop (or Start) With Books ?

Congress purports to find authority for the Manufacturing Clause in the Patent and Copyright Clause of the Constitution, which authorizes it to grant to "authors and inventors the exclusive rights to their respective writings and discoveries." But in granting exclusive patent rights to inventors, Congress has never imposed a manufacturing clause restriction in the Patent Act: (i) to prohibit the importation or distribution of machinery, equipment and other devices protected by U.S. patents granted to U.S. nationals; or, (ii) as in Sec 601, to give domestic manufacturers who infringe those patents a complete defense based on importation in violation of such a clause.

Yet in the last three decades, vast numbers of U.S. manufacturing jobs have been exported to other countries, whose manufacturers produce and export to this country enormous quantities of products that are protected by such U.S. patents -- and U.S. trademarks owned by U.S. corporations who exported many of those jobs. Nonetheless, Congress has chosen not to write a manufacturing clause into the Patent or Trademark Acts, to prevent the loss of jobs of hundreds of thousands, perhaps millions, of American workers, without violating anyone's First Amendment rights. The estimated job losses in the printing industry, now clearly very low, are microscopic compared to the job losses in industries that used to produce billions of dollars of products protected by U.S. patents or trademarks. The absence of a manufacturing clause in the U.S. Patent Act or Lanham Act would seem to reflect the judgment that manufacturing clauses are not a wise, fair or prudent method of dealing with competition by foreign manufacturers.

7. Extension of the Manufacturing Clause Will Bar U.S. Adherence To The Berne Convention

Faced with world-wide rampant piracy of U.S. copyrighted works, at a cost of hundreds of millions of dollars each year, the realization has grown that the United States should join the Berne Copyright Convention, which includes every other major copyright nation. U.S. membership is imperative because the Berne community is the only effective instrumentality for solving difficult problems that have arisen with new communications technology and the internationalization of every medium of communication. Our entry to Berne is also imperative to assure U.S. authors and producers of adequate protection in many Berne countries which are not in the UCC, and, indeed, against any Berne country which is entitled to retaliate against none-Berne countries. The EC hit list is not the be-all and end-all of retaliation against U.S. failure to give Berne-protection. Berne, itself, permits statutory retaliation in the copyright area. Moreover, our failure to join Berne is already jeapordizing our efforts to persuade nations which are the breeding grounds for large-scale piracy to improve or establish copyright protection for foreign works, an indispensable weapon against this massive pilferage of U.S. property rights. Enactment of S. 1822 will destroy our chances of joining Berne, at an enormous cost to all concerned, not the least of which are American printers and their employees who now lose considerable work and income because of foreign piracy. It should be emphasized that the

Manufacturing Clause does not prevent pirates in any other country from reproducing U.S, copyrighted works and distributing them throughout the world; and that it is another section of our Copyright Act (Sec. 602), and not the manufacturing clause, which prevents importation of those copies into the United States.

The Authors League thanks the Committee for this opportunity to present the views of American authors. We urge that the manufacturing clause be allowed to expire on July 1, 1986 and that H.R. 4696 be rejected by the Congress.

Irwin Karp
Counsel

Statement of

Norman Alterman

Vice President

Motion Picture Association of America, Inc.

and

Motion Picture Export Association of America, Inc.

My name is Norman Alterman. I am Vice-President of both the Motion Picture Association of America and the Motion Picture Export Association of America and in addition, the Director of International Legal Affairs. In this latter capacity, it is my responsibility to monitor trade legislation at home and around the world. I also actively participate in film industry responses to both tariff and non-tariff barriers to free commerce wherever they arise.

Based upon my 25 years' active experience in this field, I urge the end of the manufacturing clause, once and for all time. It represents a festering sore on the face of United States trade policy.

Others more technically expert than I, have and will continue to detail the many deficiencies in American law represented by the manufacturing clause; the ways in which it violates fundamental principles of American law; the unwarranted discrimination it produces against all American exports, including intellectual property exports, to protect one narrow interest against the need to compete.

My primary interest in the final demise of this anachronism arises from my intense involvement in recent years in U.S. trade policy concerning intellectual property and the trade barriers erected by other nations against the film industry, as well as the urgent need to bring this country into the family of nations in the copyright arena.

THE EXPORT OF INTELLECTUAL PROPERTY

It is quite evident from the intensity of interest in this aspect of U.S. trade policy that both the public sector and the private sector recognize that the future of America's trade lies in the non-goods industries, services and intellectual property.

Much effort in the last three years has gone into legislation designed to serve notice on the rest of the world, including our traditional trading partners, that this country will insist upon adequate and effective protection of our intellectual property exports around the world. Severe punitive actions have been instituted both by the private and the public sectors against countries which do not adhere to this view. In most cases, the other country has accoded to the wishes of the United States and changed its internal law and practice.

However, each of those countries watches closely to see how carefully the U.S. protects its intellectual property in its home market, in order to judge the seriousness of our intent. The manufacturing clause is a well-known barometer of that intent.

Extend the clause, however modified, and a signal will be sent instantly to all corners of the world that the United States is not serious about protecting its intellectual property. Permit the clause to expire gracefully in accordance with the planned expiration of the law itself and you signal the world that the United States means what it says.

Obviously, perfect examples of retaliation or threatened retaliation exist at the moment in the EEC, as evidenced by their winning GATT complaint, and Singapore.

The EEC complaint against the U.S. under GATT is a striking irony. The EEC is following precisely the course chosen by the U.S. to pursue protection of both services and intellectual property. Our response thus far to the EEC is directly conatry to our efforts to expand GATT.

Singapore is a more serious problem. In an extremely effective campaign, mounted by several government departments and agencies jointly with private sector industries, the government of Singapore was convinced to enact modern copyright protection and apply that protection to U.S. works. Singapore is in the midst of the legislative enactment process but has threatened to withhold the protection from U.S. works if the manufacturing clause is extended The cost to the U.S. computer, sound recording and film industries of such a decision would run into the hundreds of millions of dollars. Is a subsidy to the printing industry worth that cost to the country?

While on the subject of subsidies, it is well to remember recent complaints by the U.S. government against Brazil on its steel subsidies and the EEC on the steel subsidies in France, England and Italy. Can we be heard in one breath to complain of protectionist measures and all the same preserve protectionist measures which insulate U.S. interests from foreign competition?

For many years, the film industry has been plagued with a particulary insidious trade barrier which has stolen jobs from American workers, revenues from American manufacturers, and a pride in quality control from American films. The barrier? The local printing requirement!

The local printing requirement for American films as instituted in foreign countries hardly differs from the manufacturing clause we are today examining. Film copies intended for use in those countries may not be manufactured in the U.S. and imported, they must be manufactured locally. The raw materials are restricted to those normally found in the country, whether of adequate quality or not, although the cost is usually at least that of the finest materials available anywhere. The quality control of the manufacturing process is normally non-existant, the complaints are fended off either as a Yankee imperialist excuse for putting the industry out of business or as a concomitant of the protection the foreign country needs to protect a fledging industry.

While originally these requirements were restricted to copies destined for cinema exhibition, pace has been kept with technological development and today the restrictions cover copies intended for use in television broadcasting and satellite transmissions as well as videocassettes. Eternal vigilance and a great deal of effort goes into containing this virus to the extent that we have. Always, we must face the obstacle of the U.S. manufacturing clause.

Notwithstanding our best efforts, with the assistace of the United States government to the maximum extent possible, we still face local printing requirements:

- Prints for theatrical exhibition must be manufactured in Argentina, Brazil, Mexico and Venezuela
- Subtitled prints, which is effectively all theatrical exhibition prints, must be manufactured locally in Portugal
- Videocassettes must be manufactured locally in Argentina and Brazil

In addition, we are under attack on the issue in Australia, Canada, India, Brazil, and most of the EEC countries.

All of these countries look to the existance of the U.S. manufacturing clause as the bellweather of their need to be concerned.

THE COPYRIGHT REGIMES

Being an outspoken partisan advocate of immediate adherence to the Berne Convention as an absolute necessity for the protection of film exports in the coming years, I will need to restrain myself and merely say that I believe that the manufacturing clause represents all that is inimacal to the achievement of an international copyright regime.

Copyright today is an international ecumenical movement looking both to protect the author and to encourage the dissemination of his works. The high cost of that dissemination has forced commercialization through businesses created for that purpose. International copyright regimes seek to protect the commercialization possibilities to enhance the revenue potential of the author while at the same time providing a framework within which it is possible to achieve the dissemination, the commercialization and the protection. One without the other is meaningless.

The manufacturing clause distorts the proper functioning of the copyright regimes, thus distorting both the dissemination and the revenue.

CONCLUSIONS

- The image of the United States is badly tarnished abroad by the existance of the manufacturing clause.

- On a trade level, the existence of the manufacturing clause invites retaliation against other industries.

- The manufacturing clause inhibits U.S. adherence in full to the norms of international regimes for the protection of intellectual property.

In an era when trade policy imperatives encourage all branches of the U.S. government to mobilize for a multi-faceted drive for the protection of intellectual property exports, it is inconceivable that the legislative branch of that very same government would even consider the possibility of any action other than a decent interment for this indefensible concept.

GCIU GRAPHIC COMMUNICATIONS INTERNATIONAL UNION
1900 L STREET, N.W., WASHINGTON, D.C. 20036 202-462-1400

VICE PRESIDENT JACK GREER

July 7, 1986

Honorable Sam Gibbons
Chairman
Subcommittee on Trade
House Committee on Ways and Means
1136 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am enclosing material prepared in response to questions asked of me by Representative Frenzel during the Subcommittee's recent hearing on legislation to extend the Manufacturing Clause.

Sincerely,

Jack Greer

RESPONSE TO THE REQUEST OF

REPRESENTATIVE BILL FRENZEL FOR COMMENTS ON THE STUDIES

OF EMPLOYMENT EFFECTS RESULTING FROM TERMINATION

OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

July 3, 1986

Submitted by:

John M. Greer, Vice President
Graphic Communications International Union, AFL-CIO

1. RESPONSE TO THE JUNE, 1981 U.S. DEPARTMENT OF LABOR STUDY

The first sunset review period established for the Manufacturing Clause expired on June 30, 1982. In preparation for that review, the Department of Labor issued a report on June 15, 1981 which concluded that elimination of the Manufacturing Clause would result in the loss of 172,000 job opportunities in the printing and publishing industry and up to 367,000 job opportunities throughout the domestic economy.

Although this report was never officially communicated to Congress, its conclusions buttressed the concerns of Congress that elimination of the Manufacturing Clause would exacerbate the already-high level of unemployment. Thus, Congress passed an extension of the Manufacturing Clause until June 30, 1986.

Since the 1981 Department of Labor Study, there have been several studies of the potential economic impact of terminating the Manufacturing Clause. Each, including a new report issued in 1986 by the Department of Labor, has come to conclusions which vary substantially from the 1981 DOL study. These later studies ignore or discount several important employment effects resulting from termination of the Manufacturing Clause. In particular, the studies totally or substantially exclude commercial printing from their assessments of the economic impacts of terminating the Manufacturing Clause. These assumptions result in an understatement of the economic impacts and job losses which would occur if the Manufacturing Clause is permitted to expire.

2. RESPONSE TO THE FEBRUARY, 1986 U.S. DEPARTMENT OF LABOR REPORT

On February 26, 1986, Secretary of Labor Brock transmitted to Senator Charles McC. Mathias, Jr., chairman of the Senate Subcommittee on Patents, Copyrights and Trademarks, a study entitled "Termination of the Manufacturing Clause: An Analysis of Potential Employment Effects." This study had been requested of the Department of Labor (DOL) by Senator Mathias in January, 1985.

This study produces four scenarios with potential job opportunity loss impacts ranging from 900 to 23,300. At the outset, it should be noted that the report notes the imprecision of its own estimates. For example:

> "It should be noted that, for a variety of reasons discussed in the study, the ultimate employment effects of termination of the Manufacturing Clause can not be estimated with precision." [Page 2 of Secretary Brock's letter of transmittal]

> "There is little consensus about the portion of the output of newspapers, periodicals, book publishing, and book printing sectors that would be susceptible to foreign production should the Clause be terminated." [Page i of the Executive Summary]

Nevertheless, DOL throws caution to the wind. Its study purposefully chooses the most limited scenarios of job opportunity losses, almost totally ignores indirect job loss impacts, ignores the experience of increased printing imports from Canada (which is currently exempt from the Manufacturing Clause), ignores the potential loss of jobs to Mexico, and makes no effort

to estimate the impact on investments in plant and equipment which would likely occur if the Manufacturing Clause were terminated.

The Current State of the Industry

As the DOL study notes, the domestic printing and publishing industries are currently "relatively healthy" [Executive summary, page ii]. Overall, these industries have been growing at a faster rate than general industrial rate of growth over the 1982-83 period [DOL study, page 5]. These industries are also productive [DOL study, pages 6, 8], with output growth exceeding employment growth.

The DOL study claims [page 8] that "compared to all manufacturing industries...the printing and publishing industries tend to use significantly lower proportions of production workers relative to total employees." This claim is used as the basis of an implication that the printing and publishing industries are not relatively labor-intensive.

However, the 1982 Census of Manufacturers indicates that all U.S. industries employed [as measured by person-years] 9.7 workers per million dollars of output. The comparable figure for book manufacturing was nearly twice that level (18.7). Similarly, commercial letterpress firms employed 18.8 workers and commercial lithographers employed 16.0 workers per million dollars of output. These figures demonstrate that printing and publishing are comparatively labor-intensive.

In a similar vein, the DOL study [page 71] understates

employment in book printing for 1982. The DOL figure is 28,000 while the Census of Manufacturers for the same year concludes the correct figure is 44,700. There is an apparent effort by DOL to downplay the employment impact of the Manufacturing Clause throughout its study by use of statistics which are erroneous.

The DOL study also notes that the printing and publishing industries have, overall, maintained a favorable balance of trade [DOL study, page 10]. However, Department of Commerce statistics indicate that this phenomenon is based on a surplus of exports of periodicals, books and pamphlets. The U.S. is currently experiencing a trade deficit with regard to newspapers, commercial printed matter and items which come under the heading of blankbooks and looseleaf binders.

When the Commerce figures are examined, they reveal a very significant conclusion. The U.S. is continuing to experience a trade surplus in the very areas that are clearly covered by the Manufacturing Clause. But, at the same time, we are suffering from a trade deficit with respect to thos printed materials that are not covered by the Clause.

The DOL study also fails to note that the overall trade surplus in the printing and publishing industries is on a clear path of decline. According to Department of Commerce statistics, exports exceeded imports by 102 percent in 1982, 66 percent in 1983, and only 29 percent in 1984. For the first 10 months of 1985, the dollar value of book exports decreased by 6.3 percent while the dollar value of book imports increased by 14.5

percent. In terms of units of books, the U.S. became a net importer of books in 1933. Now, it appears the U.S. is about to become a net importer of books measured by dollar value, as well.

As Congress debates the fate of the Manufacturing Clause, it is appropriate to consider the negative impact on our record trade deficit that would result from a termination of the Clause. The U.S. has become a debtor nation for the first time since World War I. In fact, we are now the largest debtor nation in the world. The DOL study makes no mention of this vital economic issue.

DOL has concluded that all commercial printing should be eliminated from its study of the employment impacts of terminating the Manufacturing Clause. As used by DOL, commercial printing encompasses all materials in SIC Code 275. While the study notes the broad inclusiveness of this SIC Code [DOL study, page 4], it chooses to focus on "Certain outputs such as bread wrappers, menus, etc." -- which it excludes because copyright is not claimed for these items -- and calendars, post cards, playing cards, sheet music, etc. -- which are not literary and are thus not covered by the Manufacturing Clause [DOL study, page 30].

However, as Secretary Brock notes in his letter of transmittal [page 2]:

> "...[C]ommercial printers do perform some printing for other sectors which produce outputs directly affected by the Manufacturing Clause (i.e., newspapers, periodicals, and books), and to the extent that these sectors utilize commercial printers, the commercial printing sector could be indirectly affected by the termination of the Manufacturing Clause."

Regrettably, DOL attempts to downplay -- if not ignore -- this so-called indirect impact on printing establishments that produce bread wrappers as well as periodicals or books. The impact on a printing company (most of which are small businesses employing an average of 20 people) of a loss of book or periodical business will be far-from-indirect. Idle equipment translates not only into decreased productivity, but also decreased cash flow. And decreased cash flow can only serve to make it difficult to maintain current employment levels or make payments on equipment. This is a recipe for layoffs and/or business failure.

In addition, DOL's total exclusion of all commercial printing from its job impact estimates is unfounded and inaccurate. For example, many directories and at least some catalogues are clearly covered by the Clause. Telephone directories and catalogues for which copyright protection is claimed and whose content is less than 50 percent illustrations fall into this category. SIC code statistics may not be sufficiently refined to select these types of printed materials from the broad category known as commercial printing, but DOL apparently made no effort to survey the industry in order to estimate the magnitude of commercial printing that <u>is</u> covered by the Manufacturing Clause.

<u>The Inadequacy of DOL's Scenarios</u>

Strangely, amidst all of its claims about the uncertainty of data upon which to base its study, DOL has chosen to ignore totally the one source of data which provides a clear indication

of what will happen if the Manufacturing Clause is allowed to expire.

In 1976, Congress granted Canada an exemption from the Manufacturing Clause. This exemption took effect as of January 1, 1978. Since then, imports of newspapers, books and periodicals from Canada have increased substantially. While DOL argues that timeliness will prevent the foreign publication of most newspapers and periodicals [see, for example, DOL study, page 25], weekly and monthly newspapers and periodicals are currently being printed in Canada and imported into the U.S. Even more significant, Department of Commerce figures indicate that imports of books, newspapers and periodicals from Canada are growing at approximately three times the rate of increase of imports of all other products. At a time when the U.S. trade deficit worldwide is at record-setting levels, it is clear that the Manufacturing Clause exemption has made it both possible and advantageous for Canada to increase its level of exports of printed materials to the U.S. at a level which vastly exceeds the proportionate increase in exports of other products to the United States.

One may argue that Canada's geographical proximity to the U.S. makes this experience inapplicable to other countries. However, this ignores the attractiveness of low wages which exist in the Pacific and Caribbean Basin countries. If foreign printing workers are paid 15 to 50 percent of their U.S. counterparts, the lure of lower wage costs may well attract either large U.S. printers or foreign firms to establish operations in

Singapore, Hong Kong, Korea, Taiwan or the Dominican Republic.

According to DOL, three-fourths of all newspapers and more than 98 percent of periodicals are printed on a weekly or less frequent basis [DOL study, pages 25 and 26]. DOL claims nevertheless that these materials would not be printed outside the U.S. if for no other reason than the press of last-minute advertising deadlines. Its contention is not supported by facts, nor by the reality of the modern world of satellite telecommunications and air transportation. [Note that, as with other even more bulky products than books -- such as automobiles from Japan --, the cost of transportation is not likely to deter even distant Pacific Basin countries from being able to make a major penetration of the U.S. market.)

Even DOL recognizes that books are more susceptible to being printed abroad. Its study notes the uncertainty of the potential of import penetration in this sector of the industry. However, it ignores the fact that state-of-the-art printing technology is already in place in many Pacific Basin countries and could easily be in place in the Caribbean Basin, as well. Thus, books ranging from low-quality paperbacks to high-quality hardbound books can be -- and are quite likely to be -- printed in low-wage countries and imported to the United States.

DOL has ignored our neighbor to the south. If Canada, with its relatively comparable wages, can profit greatly from its Manufacturing Clause exemption, Mexico -- with its low wages -- is a likely source of imports of books, as well as fairly time

sensitive newspapers and periodicals (due to its geographical proximity to states from Texas to California). A 1983 study by the International Trade Commission [Publication 1402] notes that Mexico is already the largest foreign supplier of periodicals to the U.S. [page 170].

With the expiration of the Manufacturing Clause, low wage foreign countries will inevitably become attractive markets to print materials to be exported to the United States. This attractiveness may well lure some large U.S. printers to invest in plant and equipment overseas. It will surely drain business away from domestic printers, thus decreasing their need to make new plant and equipment expenditures. The DOL study totally ignores the impact on the U.S. economy of this displacement of investment in domestic plant and equipment.

In fact, not one of DOL's scenarios includes any estimate of the loss of indirect job opportunities [DOL study, page 43]. However, based on a "more aggregated I-O [input-output] approach" the Department states that "total job opportunity losses inclusive of those which may occur outside of the printing and publishing industries" could be anywhere from 1,400 to 47,300 [DOL study, pages 44-45]. At the same time, DOL states that: "However, offsetting export increases (within or outside of printing and publishing) may eliminate some or all of these job opportunity losses." Given present U.S. trade policies, it is incredible to argue that there will be offsetting export increases either within or outside of printing and publishing.

3. RESPONSE TO THE INTERNATIONAL TRADE COMMISSION (ITC) REPORT

In 1982, Rep. Sam Gibbons, chairman of the Trade Subcommittee of the House Ways and Means Committee, asked the ITC to do a study of the potential job losses that might result from the termination of the Manufacturing Clause. Like the 1986 Department of Labor Study, the ITC study came up with low job impact estimates.

The ITC study was based on assumptions which ignore the real world of printing. For example, the ITC based its estimates on a what it called a typical book, which it defined as 6 by 9 inches and containing 320 pages. This type of book is produced by the most automated process of all types of books, and thus requires the least amount of labor.

In addition, the ITC focused on only the direct labor cost component of book production. This ignores all those workers assigned to such tasks as material handling, inventory, machine building or maintenance and repair, production control, and the like. On this basis alone, the ITC study underestimates by at least one-half what the job impact of the loss of the Manufacturing Clause would be.

In addition, like the 1986 Department of Labor study, the ITC study excludes major areas of printing from its job impact assessment.

A more complete analysis of the shortcomings of the ITC

study was prepared for the Book Manufacturers' Institute in 1983. (see attached)

4. RESPONSE TO THE 1986 CONGRESSIONAL RESEARCH SERVICE "REPORT"

The June 2, 1986 CRS document, "Manufacturing Clause Debate: The Economic Issues," is not a report but a rather incomplete and inaccurate issue brief. It regurgitates many of the arguments and statistics of agencies opposed to the Clause without shedding any new light on the subject.

CRS takes the view that the Clause is no longer necessary because the printing industry is no longer an infant industry. No one will deny this contention as to the age of the industry. But infancy is not the only grounds that Congress has used over the past 95 years to support the Clause -- or to support protection for other U.S. industries.

In 1986, the printing industry is already facing a severe threat from low-wage countries that have the technology to increase their already-substantial penetration of the U.S. printing market.

H.R. 3465 extends the Clause only in those instances where countries are not taking responsible action to compete in the area of printed materials on a level playing field. It does not protect the U.S. printing industry from fair competition.

With regard to other contentions made by CRS, the following can be stated:

1. Printing is our seventh largest industry, but it is composed of small businesses. If the Clause is not extended as provided by H.R. 3465, most of these small businesses and the workers they employ will experience a severe negative impact as work now done here goes overseas and as investment in plant and equipment is diverted overseas. The larger U.S. printing firms will have no choice but to enter into joint ventures with firms in low-wage countries in order to compete. This will amount to a further export of U.S. jobs and an expansion of the dangerous phenomenon which Business Week recently called "The Hollow Corporation."

2. CRS, like the Department of Labor, has ignored the ability of Mexico and other near-by countries to take a major share of our printing business away from us. Canada has already done this when Congress granted it an exemption from the Clause in 1976. If Canada, whose wages are about 94 percent of the U.S. wage level, can do this, think of the dire consequences that will result if near-by countries with lower wage rates enter the printing trade by exporting printed materials to the U.S.

3. CRS ignores the fact that many other countries of the world have tariff and non-tariff barriers to our printed materials that are grandfathered or otherwise permitted by existing international agreements. The U.S. would be engaging in another act of unilateral trade disarmanent by failing to extend the Manufacturing Clause.

4. Finally, CRS repeats many of the errors of studies done by the International Trade Commission in 1983 and by the Department

of Labor in 1986. Each of these studies, including CRS' studies of 1980 and 1986, focus solely on book manufacturing to the exclusion of other segments of our printing industry. And these studies even manage to distort the impact on book manufacturing.

For the foregoing reasons, this subcommittee -- and Congress -- may well be entitled to be confused by the findings of the various studies of the economic impact of allowing the Manufacturing Clause to expire. Let me assure you, however, that there is no doubt that thousands of printing shops in communities throughout this Nation will feel the effects of the expiration of the Clause. Within a matter of a few years, printing will no longer be one of the ten largest industries in this country, and we will have experienced more de-industrialization, increased unemployment, and a higher trade deficit. None of the studies performed after 1981 make any effort to put a dollar figure on these impacts -- or even to acknowledge their existence.

THE PROBABLE EFFECTS OF ELIMINATION OF THE MANUFACTURING CLAUSE OF THE U. S. COPYRIGHT LAW

By

Book Manufacturers' Institute
Reports To Management Committee
October 21, 1983

In July, 1983, the U. S. International Trade Commission issued a report known as USITC Publication 1402, STUDY OF THE ECONOMIC EFFECTS OF TERMINATING THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW. This study concludes that:

1. The basic argument to retain the clause is to prevent the transfer abroad of U. S. production and employment.

2. The basic argument to terminate the clause is that the U. S. book manufacturing industry is competitive worldwide. (This is hardly an argument for termination at all; at best it might lead to the conclusion that retention or termination is immaterial).

3. Termination would result in only a minimal impact on the domestic printing industry.

In order to assess the validity of these conclusions, it's necessary to review each, independently, to test them against previous studies and to determine if they are supported by sound facts and reasoning. Hence, each of these 3 points are addressed independently:

1. Loss of Employment Opportunity

In selecting the "typical" 6 x 9, 320-page book as the basis for analysis of the direct labor cost component of book costs, the Commission has selected the most standardized, and automated, book in the industry - which, naturally, will produce the lowest labor cost factor. In addition, with the selection of the "unjacketed" book and the exclusion of other components (e.g., illustration sections), both of which are commonplace, the actual labor component is understated, and the "ripple" effect on commercial printers, who are generally called upon by the publisher or manufacturer to provide these components, is ignored.

The decision to isolate only the "direct" labor cost component, which does not equate to total production workers, causes a gross understatement of the number of employees affected by elimination of the manufacturing clause. Plants responding to the survey would define "direct" labor to include only those personnel assigned to the operation of a piece of printing or binding equipment, but would ignore all workers, production and administrative alike,

assigned to other duties (material handling, inventory, machine/ building maintenance and repair, supervision, production control, administration, sales, etc.). In the typical plant, these numbers would at least equal, and probably exceed, the "direct" labor personnel. On this basis alone, the impact on employment opportunities would be more than double the ratios cited in the Commission report.

In addition to the foregoing, other manufacturing operations (in particular, typesetting, proofreading, color separation, etc.) are ignored. Much of this effort, with new advances in electronics, is easily portable or transmittable, but it can be assumed that these efforts will remain close to the point of printing.

In a separate, earlier study (THE EMPLOYMENT EFFECTS OF ELIMINATING THE MANUFACTURING CLAUSE OF THE U. S. COPYRIGHT LAW, U. S. Dept. of Labor, Office of Foreign Economic Research, June 15, 1981), the U. S. Department of Labor estimated the Low Range Effect of elimination of the clause to be a 30% decrease in output in the Book Printing Sector, and equated this to 42,100 jobs, comprised of 13,600 direct losses and 28,600 indirect (all figures rounded). Reducing this estimate to 10% (the high range of the Commission forecast) would imply an impact of 14,050 jobs in the Book Printing Sector vs. the numbers cited in the Commission report. Significantly, the Labor Department established credibility for its estimates by cross-references to earlier studies done by an independent consultant, a major union and the Congressional Research Service.

Finally, an analysis of the run length distribution (Table 28 of the Commission report) shows printing run lengths to be heavily skewed to the short run. This implies that the labor cost component of the average book will tend to be on the high side of the Commission's estimated range. In addition, Table 28 shows the ratio of first to subsequent printings, illustrating the magnitude of the "ripple" effect in typesetting and related operations.

In summary, the fact that the Commission's focus on direct labor ignored the plant indirect and other labor, as well as the effects on other industry areas, and further that the Department of Labor study - when adjusted to the Commission's 10% estimate - produces a number that is credible by comparison to the Commission report if adjustments are made for these omissions, reinforces the credibility of the Department of Labor Study.

While it would be impossible to reconcile the difference in estimated impact (2-10% by the ITC vs. 30-40% by the Department of Labor), it's sufficiently demonstrated that the translation of the percentage into employment opportunities in the Commission report produces a gross understatement of job loss, and actual losses would be 2 to 3 times their estimate based on their own percentages, and many times higher if Department of Labor estimates of impact and other affected areas are correct.

2. Competitive Position Of U. S. Book Manufacturing Industry

A significant point is made that the U. S. is competitive in all aspects of manufacture except labor, that the U. S. is the leading producer of

equipment, and that our papers are cost and quality competitive with papers produced worldwide.

In actual fact, West Germany would have to be considered the world leader in hard cover binding machinery. (See Table 24 of the study). The U. S. has held the number one position in production of machinery by virtue of its position in web presses, which feed the commercial and book printing sectors alike. Even this position is in jeopardy with the entry of Japan into the high-speed web press market (e.g., all TV Guides are printed on Toshiba equipment). Japanese presses will present a formidable challenge to U. S. presses as a result of this accomplishment.

Except in those areas where specifications are legislated or rigidly controlled (e.g., El-Hi texts), book and magazine publishers alike have shown a willingness to accept lower quality as long as utility is not sacrificed. Hence, the rapid growth of groundwood papers, both coated and uncoated, in both sectors. It can be reasoned, then, that lower quality papers will continue to be accepted if a significant cost reduction is offered.

Newer typesetting and pre-press techniques, making extensive use of computers and electronics, is another portable technology. There is sufficient evidence of activity in all areas of electronics in the Pacific Basin countries.

Printing costs in the U. S. have had upward pressure for the past decade as a result of legislative requirements (OSHA, EPA, state regulations, etc.). Similar pressures have been exerted on paper production. Substantial investments of capital have been made to live with these regulations. Color printers are experiencing competition from the Far East in terms of prices that are 50% below those offered domestically. There is no reason to expect a different set of criteria to apply to black and white printing, or to binding, which is much more labor intensive. Major publishers in the U. S. tend to supply the majority of their paper to the book printer. As a result, the percentage saving in offshore printing would be magnified.

Transportation cost is cited as the mitigating factor that would preclude offshore printing, by equalizing total cost. This line of reasoning is not nearly so relevant when applied to a Mexican border region plant in competition with a major Southwest printer.

Today's high-speed equipment is available world-wide, and it does not require billions of dollars of investment to make a significant market entry. Machinery produced within the region, plus low-cost or subsidized labor, would offset transportation considerations. Publishers, faced with market resistance to pricing (particularly of hard cover books) would be hard pressed to ignore any savings they might obtain, and have, many times over, demonstrated a willingness to lower quality standards for materials where utility is not affected.

3. Probable Impact Of Foreign Competition

The Commission study states that the initial disruption would be evident only in the early years following withdrawal of the clause, and that the

long-range effect would be generally insignificant. This statement is reinforced with the statement that they found no indication of major expansion of printing capacity by low-cost producers of the Pacific Basin.

Further, the study states:

> "Domestic book-manufacturing firms that produce a variety of books would be least affected . . . . firms specializing in high-labor-cost books would face the most competition."

These phrases are self-contradictory, in that those firms with a high labor component are the same firms that would be producing a variety of books. The low-labor-component firms are those that would be specializing in terms of trim size and binding type.

The "lack of perceived activity" is, at best, a post hoc argument. There is no reason for perceived activity while the umbrella of the manufacturing clause is in place. The development of manufacturing capacity would naturally follow the knowledge that deletion of the clause is imminent. See the reprint article from THE STRAITS TIMES, Singapore, December 2, 1981, attached. This preceded the earlier scheduled expiration by 7 months.

To illustrate the point of the resiliency of the Far East to capitalize on a perceived market, I would suggest one try to buy an American-made baseball, radio, watch, 35mm camera, calculator, phonograph, or VCR machine. Competition in electronics from chip technology to plug-compatible main-frames to "super-computers" is heating up. There was little advance evidence of significant expansion of Japanese auto capacity, where transportation was also a significant cost factor, but their response to the market created by escalation of energy costs was nothing short of spectacular.

The industry itself is ill-equipped to absorb any shrinkage of markets. Economic and demographic pressures continue to erode the demand for textbooks. Price resistance at the consumer level continues to fuel a growth of soft-cover books and an erosion of the hard-cover market. Both of these factors translate into loss of job opportunities quite independent of foreign competition.

U. S. book printers have made substantial investments in plant and equipment in the past decade. Dozens of major firms have closed in the past 15 years, rather than make these investments, or because they attempted them too late to salvage their markets. Others have undergone leveraged buy-outs, and are independent - often with the help of industrial development funds from federal, state and local levels. Any loss of market will fuel upward pricing needs to generate cash for such commitments, at the same time that over-capacity will generate more competitive pricing. This is a "Catch-22" that can only result in another round of plant closures as the industry re-positions itself.

The "minimal long range impact" theory seems to be a self-serving theory supported by neither logic nor history. Both logic and history,

as well as more recent experiences with deregulation of major industries, set a clear scenario of new entries into the market with a labor cost advantage, and low or artificial pricing, generating a round of price competition and over-capacity. The net result is a series of plant closures, with a shake-out of smaller producers, a centralization of work among the remaining producers, and less competition than ever. The key difference here, though, is that the redistribution of employment will not be within the geographic confines of the U. S., but, rather, a significant net loss of employment, further upset of balance of payments, and greater need for re-distribution of income creating new inflationary pressures, fueling higher U. S. costs and creating even more sales opportunities for offshore producers.

In conclusion, it appears evident that the loss of employment opportunity is greatly understated, the competitive position of the U. S. Book Manufacturing Industry is more vulnerable than indicated, and the probable impact of foreign competition more severe than one is led to believe by the Commission study.

On that basis, arguments for retention of the clause appear far more compelling.

Good times ahead for local printers

AN IMMINENT relaxation in America's copyright laws is promising brighter days ahead for Singapore printers.

A provision in the new law says that from July 1, 1982, books by American authors printed and bound anywhere in the world will still be eligible for copyright protection within the US.

This will give Singapore printers a good opportunity to expand into the US market.

In effect this means that "about 45 per cent of the US printing market will be vulnerable to foreign competition," said the latest issue of the Mirror, a Ministry of Culture publication.

And against this backdrop, the 140 per cent jump in Singapore's domestic exports of books and magazines to the US to $3.8 million worth in 1980 is highly significant even though the US shares only 11 per cent of Singapore's export market.

Reputation

For one thing, this indicates that Singapore's reputation as an attractive printing centre has spread from Asia to the US.

It is also worth noting that Australia is Singapore's largest export market for books and magazines despite its strict protectionist policy.

International newspapers and magazines have started to be printed in Singapore which testifies to their confidence in the sophistication of the local industry.

More and more publications that used to be printed in Hongkong are now being printed here.

Asian Business started printing here in October and soon Far Eastern Technical Review also from Hongkong will do the same.

Already the Asian Wall Street Journal is printed locally via satellite from Hongkong. This has been done by Times Printers, a member of The Times Organisation, since June.

"Such a move reflects the sophistication of our local industry," said the Mirror. In addition, at least one international daily and one worldwide magazine should be printed here soon.

Hongkong printers are becoming worried as more publishers look to Singapore, especially after the 200 per cent increase in HK postal rates recently.

In fact, about 5 per cent of the colony's total annual orders have been shifted to Singapore.

Emphasis

But even though the industry here has caught up with its rivals in Taiwan, South Korea and Hongkong, it still has a long way to go to reach world standards.

But local printers should be able to catch up as they channel their resources towards the upgrading of the industry with government help, said the publication.

Emphasis is now being placed on improving printing techniques and methods of management, as well as continual upgrading of workers' skills and vigorous marketing promotion.

Trade missions and participation in international printing exhibitions such as the "Face to Face Exhibition" held in New York in November enabled printers to meet foreign publishers and tap the American market.

Twenty local printers will also attend the Drupa, one of the hugest printing exhibitions, in Dusseldorf, German,in June 1982.

The government itself offers attractive incentives for the upgrading of the industry. These include the Economic Development Board's Small Industries Finance Scheme and the Skills Development Fund Interest Grant for Mechanisation Scheme.

THE STRAITS TIMES

Singapore

December 2, 1981

SUBMISSIONS FOR THE RECORD

WASHINGTON OFFICE

AMERICAN LIBRARY ASSOCIATION

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Statement of the

American Library Association

to the

Subcommittee on Trade

of the

House Committee on Ways and Means

in opposition to

HR 3465 and HR 4696

extending the

Manufacturing Clause of the Copyright Law

beyond June 30, 1986

June 26, 1986

The American Library Association strongly opposes the bills before you which, in one way or another, would make permanent the manufacturing clause of the copyright law now due to expire on July 1, 1986. HR 3465 would simply extend the present limited manufacturing clause into the indefinite future. HR 4696 would make the manufacturing clause in its present form permanent on July 1, 1988, but provide for "exceptions" for "certified countries," except that Canada would enjoy an automatic exemption to January 1, 1989. At present, the clause applies only in essence to books by American authors, who lose their U.S. copyright protection and may have their books barred from the United States if they are printed abroad, a very serious penalty which few authors or their publishers will risk. The clause now "protects" a small fraction of the $3 billion annual production of books in the United States from foreign printing competition.

The ALA believes that Congress should allow the clause to expire. There is no economic justification for either continuing the clause or setting up exemptions through a "certifying" process. In the calendar year 1985, the Department of Commerce reports that the United States enjoyed a favorable balance of trade both for books and for all printed matter, as follows:

	Exports	Imports
Books	$600 million	$560 million
All printed matter	$1.3 billion	$1.2 billion

This was a year in which the dollar on average was at an all time high in relation to other currencies, hampering exports and encouraging imports. The dollar has since come down significantly (over 25 percent) and the Administration has wide support for encouraging further reduction.

In its July 1983 report to the House Ways and Means Committee, Study of the Economic Effects of Terminating the Manufacturing Clause of the Copyright Law, the International Trade Commission found that: contrary to the claims of proponents of the clause as it now stands, repeal would potentially result in reduction in U.S. employment in printing and related industries of only some 1,400 to 6,850 jobs, less than the annual turnover in

these industries and far less than the potential loss of employment in other industries threatened by retaliation by the European Economic Community if the manufacturing clause is continued.

It is true that HR 4696 proposes an "escape hatch" from the manufacturing clause, eliminating its application to materials from countries certified by the U.S. Trade Representative as protecting intellectual property, and imposing no tariff (or non-tariff) barriers to all U.S. printed materials and certified by the U.S. Secretary of Labor as taking or having taken steps to afford internationally recognized workers' rights. We believe that few countries would at this time qualify for exemption, and there would be little incentive to take steps to qualify, especially on the part of countries which do not now protect U.S. intellectual property under international conventions.

Why is the American Library Association interested in this question? One answer is history---we have opposed the manufacturing clause, unique to the United States, for decades because it discriminates against American authors, without whom there would be no publishing industry, book manufacturing, effective libraries, or an informed and educated citizenry. Also important at this time are the price increases on some published materials which would result from giving U.S. producers a monopoly position, and the reduction of the availability of books to library users and all book purchasers.

As brought out in earlier Senate Hearings, illustrated children's books by American authors, one of the few categories of books now printed abroad by specialized companies, would either be reduced in number and raised in price, or give way to similar books by foreign authors which the manufacturing clause does not prevent from being printed abroad. Convincing testimony on this point was presented by Rebecca Ratliff, Head Children's Librarian, Bethesda Library, Montgomery County (Maryland) Department of Public Libraries, and Marc Cheshire, Editorial Director, Books for Young Readers, Henry Holt & Co., before the Senate Judiciary Subcommittee on Patents, Copyrights, and Trademarks, on January 21, 1986.

The American Library Association, with its more than 42,000 members in all types of libraries---public, school, higher education, business and specialized---represents the consumers of books counted in the tens of millions of library patrons as well as many more millions of readers. We urge the Congress to allow the manufacturing clause to expire, as it is now scheduled to do on July 1, 1986.

LESS ACCESS TO LESS INFORMATION BY AND ABOUT THE U.S. GOVERNMENT: VII

A 1986 Chronology: January - June

During the past five years, this ongoing chronology has documented Administration efforts to restrict and privatize government information. A combination of specific policy decisions, the Administration's interpretations and implementations of the 1980 Paperwork Reduction Act (PL 96-511), implementation of the Grace Commission recommendations and agency budget cuts have significantly limited access to public documents and statistics.

Since 1982, one of every four of the government's 16,000 publications has been eliminated. Through two 1985 directives, the Office of Management and Budget has clearly consolidated its government information control powers. Circular A-3, Government Publications, requires annual reviews of agency publications and detailed justifications for proposed periodicals. Circular A-130, Management of Federal Information Resources, requires cost-benefit analysis of government information activities, maximum reliance on the private sector for the dissemination of government information, and cost recovery through user charges. The likely result is an acceleration of the current trend to commercialize and privatize government information. Recent proposals to discontinue or contract out National Technical Information Service exemplify this trend.

Another development, with major implications for public access, is the growing tendency of federal agencies to utilize computer and telecommunications technologies for data collection, storage, retrieval and dissemination. This trend has resulted in the increased emergence of contractual arrangements with commercial firms to disseminate information collected at taxpayer expense, higher user charges for government information, and the proliferation of government information available in electronic format only. While automation clearly offers promises of savings, will public access to government information be further restricted for people who cannot afford computers or pay for computer time?

ALA reaffirmed its long-standing conviction that open government is vital to a democracy in a resolution passed by Council in January 1984 which stated that "there should be equal and ready access to data collected, compiled, produced, and published in any format by the government of the United States." In January 1985, Council established an Ad Hoc Committee to Form a Coalition on Government Information. The Coalition's objectives are to focus national attention on all efforts which limit access to government information and to develop support for improvements in access to government information.

With access to information a major ALA priority, members should be concerned about the following series of actions which create a climate in which government information activities are suspect. Four previous chronologies on the same topic were compiled in an ALA Washington Office publication "Less Access to Less Information By and About the U.S. Government---A 1981-84 Chronology: April 1981 - December 1984." Two updates in 1985 continued the chronology; the following covers January - June 1986:

January 1986 In a January 7 letter to the editor, Wendy L. Gramm, Administrator for Information and Regulatory Affairs, Office of Management and Budget, challenged The Washington Post's assertion that statistical programs have been "hacked away at" by

the Administration. Replying to a December 23 editorial, "Privatizing the Numbers," Gramm said: "No one is proposing to stop furnishing necessary information. No one is proposing to dismantle our federal statistical structure." She went on to say: "OMB's new policy does not provide...that the public be cut off from government information." Gary D. Bass, Executive Director of OMB Watch, in a January 21 letter to The Post charged that Gramm's letter "greatly misled the public."

January — Due to budget cutbacks, the U. S. Department of Agriculture can no longer report to the nation the total poundage of food consumed per capita in the United States. The information has been lost primarily due to the discontinuance of crop reports from USDA. The Food Institute says that the information as now published prevents food industry researchers from making any meaningful comparisons in the fruit and vegetable areas, such as comparing changes in the national diet (like the changeover from animal to crop products), and a host of other analyses. (Dear Friend letter from Frank J. Panyko, Vice President of The Food Institute, January 13, 1986)

January — The Administration is considering a change in federal reporting requirements that would eliminate a major source of data about how much federal grant and contract money goes to minority firms. Administration officials said that the OMB and the Commerce Department may adopt a reporting form similar to one now used by Commerce to track how federal grants are spent. Although the Commerce questionnaire asks about funds spent with minority contractors, it requires no data on how money is spent with subcontractors. Subcontracting is a major source of federal funds for minority businesses which often are too small to bid for the overall contract. Rejection of data-collection plans and the move toward a standardized, abbreviated information-gathering form have led critics to charge that the Administration wants to do away with most racial data gathering. (The Washington Post, January 14)

January — The Federal Election Commission announced that "drastically curtailed public disclosure of federal campaign finance information will result from a series of budget cuts forced upon the FEC." Effective March 1, the computerization of itemized information filed by political committees on the '86 election will be reduced severely, although candidate and political committee reports will continue to be available on microfilm for public review and copying. Among the effects of the reduction in computerization will be a reduction in timeliness, since data entry time probably will double; accuracy of detailed information may be reduced because less expensive methods of data entry will be used; and availability of detailed information will be reduced. (FEC, news release, January 30)

Stepping into the breach is Washington Online's Campaign Contribution Tracking System which includes all FEC reports filed since 1983 and costs $3,500 in annual subscriptions for unlimited usage. ("Databases," no date)

January — At its Midwinter Meeting, ALA Council passed a resolution urging ALA members to monitor the effects on government information and publications of the implementation of OMB Circular A-130, Management of Federal Information Resources, and to report problems to the ALA Washington Office, Members of Congress, and OMB.

February — As was proposed last year, the President's budget would again eliminate all postal revenue forgone appropriations. If enacted, this would mean that as of October 1, 1986, those eligible for free mail for the blind would have to pay the full cost of this mail; and major increases would take effect in all subsidized rate categories including nonprofit bulk mail, classroom publications, and the fourth-class book and library rates. Since rates as of January 1, 1986, are at full attributable cost levels, enactment of the budget would eliminate all indirect subsidy and result in regular commercial rates. A two-pound library rate book package would be $.94. (OMB, Budget of the United States Fiscal Year 1987, Appendix)

February — For the fifth year in a row, the President's budget submitted to Congress proposed to eliminate the Library Services and Construction Act and Higher Education Act Title II library grant programs. In addition, the budget included proposals for FY '86 to rescind or "unappropriate" all library grant program funding except LSCA I and III where about half the states had already received funds. (Ed. note: These funds were released in mid-April after Congress did not agree to the rescissions.) (OMB, Budget of the United States Fiscal Year 1987, Appendix)

February — In the FY 1987 budget documents, one of the "accomplishments in 1985" announced that departments and agencies eliminated or consolidated 3,848 publications, approximately 25 percent of the federal inventory, to achieve cost avoidances of $35 million, a 20 percent reduction since 1981. (OMB, Management of the United States Government, Fiscal Year 1987)

February — The Federal Communications Commission will publish summaries rather than the full texts of Notices of Proposed Rulemaking, rulemaking decisions and policy statements in the Federal Register. The FCC decided that "publication of detailed summaries would be a reasonable and cost-efficient way of apprising the general public of its actions." Federal Register publication of the actual texts of final rules will be continued. Budgetary constraints and the rising cost of Federal Register publication were given as the rationale for the cuts. To cut publication costs further, the FCC also amended its rules to enable it to reduce the amount of material published in FCC Reports. Hereafter, only those rulemaking decisions and policy statements summarized in the Federal Register and not published in Pike and Fischer (a private sector service which costs $1,875 to initiate and $1,375 for an annual subscription) will be published in FCC Reports. (FCC News, Report No. GN-9, February 24, 1986)

March — Birth expectation data is missing from the current (June 1984) Fertility of American Women report from the Bureau of the Cen-

sus. The supplemental question required to obtain the information was dropped from the Current Population Survey in 1984 because of cost considerations. Martin O'Connell, Chief of the Fertility Statistics Branch at the Bureau, said that the birth expectation data will be provided through external funding sources in the 1985 and 1986 surveys. Collection of the birth expectation data will continue to depend on external funding sources unless the importance and use of these data are made known to the Bureau. (National State Data Center Steering Committee Newsletter, March)

March — The House Appropriations Committee has directed the Department of Transportation's Research and Special Programs Administration to study charging user fees or contracting with private firms for its aviation information management activities, according to the March 3, 1986, issue of Aviation Daily. RSPA is turning data collection functions over to the Transportation Systems Center, which the Department wants to "privatize" in April 1986, according to RSPA Administrator Cythia Douglass. On April 1, RSPA announced that it will resume production and distribution of Air Carrier Traffic Statistics, Air Carrier Financial Statistics, and Air Carrier Industry Scheduled Service Traffic Statistics. Subscriptions to these publications will be sold by TSC for $150, $50, and $50, respectively. When sold by the Government Printing Office, Air Traffic Statistics cost $74 and Air Carrier Financial Statistics cost $16.

March — Budget cuts mandated by the Gramm-Rudman-Hollings balanced budget measure brought on a fiscal emergency at the Library of Congress requiring the elimination of 300 positions, the reading rooms closed on Sundays and most evenings, and significantly fewer items purchased, cataloged, preserved, and made available to the blind. (March 4, Congressional Record, pp. E588-9)

March — The federal government's spending on the collection of data about higher education declined by 63 percent between fiscal 1974 and 1984, and spending on education research dropped by 64 percent, according to a study by the General Accounting Office. In the same period, spending on the entire Department of Education rose by 22 percent. At the request of the House Subcommittee on Select Education, GAO is conducting a comprehensive study, expected to be completed by December, of the condition of federally sponsored education research and data collection. Early findings show that reductions in spending on the gathering of education statistics have been disproportionately higher than cutbacks in other statistical agencies. Between fiscal 1980 and 1984, the budgets of most federal agencies devoted to the collection of statistics suffered an eight percent reduction. The budget of the National Center for Education Statistics, however, shrank by 28 percent during that period. The GAO also found that in some instances NCES had decreased the sizes of its samples and the frequency of some types of data collection activities. That, it said, raised some concerns about the validity and quality of the work done by the agency. (The Chronicle of Higher Education, March 5)

March — A federal health official phoned the Department of Health and Human Service's main library to ask for the March 13 issue of the New England Journal of Medicine. He reported, "They said that because of Gramm-Rudman we no longer have that journal. "Can you imagine? The top federal health agency!" The HHS librarian, John Boyle, said: "I don't know whether it can be ascribed to Gramm-Rudman, but the department is holding orders. The subscription has expired and is awaiting renewal. We are waiting for money to be approved." (The Washington Post, March 28)

March — The Joint Committee on Printing in a March 14 letter to every Representative and Senator, outlined the effects of the Gramm-Rudman-Hollings 4.3 percent cut as of March 1 on the printing and distribution of congressional publications. They announced that the public will be referred to GPO bookstores to purchase congressional documents such as bills, public laws, reports, committee prints, hearing records, etc. (Ed. note: See May entry on this issue.) (Dear Colleague letter from Sen. Charles McC. Mathias, Jr., and Rep. Frank Annunzio)

March — At a March 17 hearing, the Joint Economic Committee heard from private economists who said that the quality of the nation's economic statistics is in danger of being destroyed through a combination of budget cuts and bureaucratic neglect. One of the witnesses, Courtenay Slater, was the author of a study commissioned by the committee on problems with government statistics. For information about the report, "Opportunities for Improving Economic Statistics," contact the JEC, G-01 Dirksen Senate Office Building, Washington, D. C. 20510, 202/224-5771. (The Washington Post, March 16)

March — The Defense Department and the Central Intelligence Agency, have initiated a disinformation program which covers 15-20 programs, six or seven of which are Defense Department projects. Deliberately false, incomplete and misleading information, including altered technical information, will be released in order to impede the transfer of accurate technological information to the Soviet Union. A six-inch-thick document outlining the program to the armed services asks for comments "on the use of false requests for proposals, false or misleading information to be given at press interviews, inaccurate performance figures for aircraft and weapon systems, and other altered technical information." A Defense Department official said: "If some of the results of the disinformation activity on a particular program get passed on to Congress through hearings or other means, there are channels on the Hill that can be used to get the correct information to the people who need to know." (Aviation Week & Space Technology, March 17)

March — In a March 26 letter to Sen. Mathias and Rep. Annunzio, ALA Washington Office Director Eileen Cooke protested that the JCP plans to sell all Congressional documents "...means that participation in an active, meaningful and timely way in the federal legislative process will now depend on the ability to pay." She asked the JCP to reconsider the recently announced restrictions on public access to basic congressional documents. Cooke sent a

letter May 6 to every Senator and Representative urging them to ask JCP to reconsider. Other groups have also protested, and there has been increasing publicity about the proposal in the Washington, D. C., area newspapers. (Ed. note: See May entry on this issue.) (See "Endless Reams of Legislative Paper May Be Yours...for a Price," The Washington Post, May 13)

March — In a March 29 column in The Washington Post, Jack Anderson and Joseph Spear described the National Wartime Information Security Program (WISP), "the blueprint for press censorship." The broad sweep envisioned for WISP was described in an internal Pentagon memo prepared for a meeting of government planners on September 21, 1983: "The National WISP provides for the control and examination of communications entering, leaving, transiting or touching the borders of the United States, and voluntary withholding from publication, by the domestic public media industries, of military and other information which should not be released in the interest of the safety and defense of the United States and its allies." The memo included a bow to the First Amendment: WISP was not to be used indiscriminately---for example, "as a guardian of public morals." Anderson and Spear concluded: "The alarming thing about the Pentagon directive is that it allows the defense secretary to set up a censorship program 'If the United States is believed about to be attacked.' Attacked by whom? The Soviet Union? Libyan hit squads? Killer bees? The directive does not specify. All the defense secretary needs is the president's permission and the news-media is silenced---at gunpoint if necessary."

April — At the request of Rep. Major Owens (D-NY), the House Postsecondary Education Subcommittee chaired by Rep. William Ford (D-MI) held a library oversight hearing on April 8 on OMB Circular A-130 and its implications for access to government information; H.J.Res. 244, calling for a White House Conference on Library and Information Services in 1989; and the impact of Administration budget proposals for federal library programs (including LSCA, HEA, the ECIA Chapter 2 school block grant, and postal revenue forgone).

April — The Council on Environmental Quality decided to abolish a rule that requires federal agencies to consider the worst environmental consequences of their actions, contending that the regulation is "unproductive and ineffective." The decision caps a three-year Reagan Administration effort to limit the reach of the National Environmental Policy Act. Since 1970, NEPA has required federal agencies to prepare detailed analyses of the environmental effects of dams, nuclear waste disposal sites, pesticide-spraying programs and other federally financed projects. Final regulations were published in the April 25, Federal Register, p. 15618, with corrections on May 7, p. 16846. National Wildlife Federation official Norman Dean said the change significantly weakens existing rules, which require agencies to disclose the absence of information in all instances. "The fact that information is missing in the first place makes it almost impossible to determine if a significant impact is reasonably foreseeable," he said. "Under the new rule, an agency wouldn't even have to identify the fact

that information is missing," Dean observed. (The Washington Post, May 25)

April — The Commerce Department announced a study of alternatives for privatizing the National Technical Information Service in the April 28 Federal Register, pp. 15868-70. The notice asked for public comment on privatization alternatives (discontinuing NTIS completely, selling or contracting out all or portions, establishing a public or private special-purpose organization) and on ten key issues including whether government reports placed in NTIS should be copyrighted. In a June 6 letter to the Department of Commerce, ALA Washington Office Director Eileen Cooke urged that NTIS continue to operate either as, or within, a not-for-profit public service agency with continued Congressional oversight.

April — Rep. Glenn English (D-OK) chaired an April 29 hearing of the House Government Operations Subcommittee on Government Information, Justice and Agriculture, to review a controversy about public access to the papers and recordings of the Nixon White House. The National Archives and Records Administration published regulations implementing the Presidential Recordings and Materials Preservation Act of 1974 in the February 28 Federal Register, p. 7228. Officials from NARA, OMB, and the Department of Justice were questioned about a February 18 Justice memorandum (requested by OMB) which basically allows former President Nixon to control public access to documents of his administration. (OMB Watch, May 9)

May — The Reagan Administration is considering the criminal prosecution of five news organizations for publishing information about American intelligence-gathering operations, particularly intercepted communication reflecting U. S. code-breaking capabilities. "The president himself first revealed the nature of these intercepted messages," said Leonard Downie, Jr., managing editor of The Washington Post. "What we reported subsequent to that---details of the intercepts---did not do anything more to reveal our intelligence capabilities than the president himself did." (The Washington Post, May 7)

May — Speaking to a group of students on May 21, President Reagan said that the problem of hunger in the United States is caused by "a lack of knowledge" about where to obtain help. Critics responded by blaming administration policies. J. Larry Brown of the Harvard School of Public Health, chairman of the Physicians Task Force on Hunger in America, said the Administration had eliminated a program to inform people about food stamps benefits. (The Washington Post, May 22)

May — A public notice in the May 22 Congressional Record, p. H3161, announced that effective June 2 new procedures for public distribution of congressional documents would be instituted at the House and Senate Document Rooms. Public distribution of both House and Senate materials will be handled only through the Senate Document Room located in Room B-04, Hart Senate Office Building. The public will be entitled to receive one free copy of

any bill, report, resolution, public law or other document typically distributed in the Document Room. Additional copies may be purchased. The public still may obtain copies of committee prints and hearings from individual committees. Once the committee supply of each document has been exhausted, the public may purchase additional copies from GPO's Congressional Sales Office, North Capitol and G Streets, N. W., Washington, D. C. 20401.

May — "The Pentagon, concerned with the flow of high technology to the Soviet bloc, is trying to limit foreign access to government and commercial computer data bases that contain sensitive technical information. A range of legal and technological options are now under exploration, from licensing access to high-tech data bases to planting special computer programs within the data bases to monitor who is seeking what information. Government officials concede, however, that they face formidable obstacles in devising a workable system, including such questions as whether data bases enjoy the same constitutional protections as other media and how to implement restrictions in ways that won't deny data-base benefits to American users." (The Washington Post, May 27)

June — OMB has agreed to fuller disclosure of its role in reviewing proposed federal regulations. All original versions of draft and final rules sent to OMB will now be made public upon request, along with OMB's written suggested changes and reasons for them. At present, only the published version of a rule---in which OMB's revisions cannot be tracked---is available. Sen. Carl Levin (D-MI) said: "No longer will OMB operate within the shade-drawn, doors-closed, no-fingerprints environment in which it has operated for the past five years." Sen. David F. Durenberger (R-MN), and Reps. John D. Dingell (D-MI) and Jack Brooks (D-TX) are other leaders of a bipartisan group of congressmen who are threatening to cut OMB funding by the $5.4 million required to run the Office of Information and Regulatory Affairs, currently headed by Wendy Lee Gramm. (The Washington Post, June 17)

June — At a joint hearing on June 18 of the House Post Office and Civil Service Committee and the Senate Committee on Governmental Affairs, members of the Postal Rate Commission presented results of a congressionally mandated preferred rate mail study. Among their recommendations are: 1) recalculating the revenue forgone in a way which would reduce the appropriation by some $265 million a year; 2) eliminating the revenue forgone appropriation entirely (except for the small amount needed for free mail for the blind and free voting-rights mail) by amending the rate-making statute to provide separate subclasses for the eligible nonprofit mailers; and 3) restricting eligibility for advertising or commercialized uses of the nonprofit rates. The report recommends ending eligibility for publishers and distributors for books and other qualifying material they mail to libraries and other eligible institutions.

STATEMENT OF THE AMERICAN PAPER INSTITUTE ON
H.R. 4696

LEGISLATION TO EXTEND THE MANUFACTURING CLAUSE
BEFORE THE

HOUSE SUBCOMMITTEE ON TRADE

The American Paper Institute (API) is the national trade association representing U.S. companies that account for over 90% of the U.S. production capacity of pulp, paper and paperboard. In 1985, shipments of the paper and allied products industry accounted for nearly $98 billion. The industry operates in every state of the union and employs over 680,000 people.

We are opposed to HR 4696. This bill would extend the so-called "Manufacturing Clause" of the Copyright Act beyond its scheduled June 30 expiration date. Enactment of this provision, which in effect bans the importation of U.S. copyrighted literary material not printed in the U.S. or Canada, will result in retaliatory action by our trading partners. This will produce a net negative effect on our industry's trading situation.

In 1984, the General Agreement on Tariffs and Trade (GATT) found the "Manufacturing Clause" in violation of the United States' international obligations, but retaliation by GATT members was withheld pending the Clause's expiration this June. The U.S. Government accepted the findings of the GATT Council. Since the U.S. Government has consistently stressed the need to strengthen the GATT's dispute settlement mechanism, this puts an additional responsibility on the U.S. to conform to the GATT Council's decisions.

On March 12 of this year, the EC requested the GATT's permission to retaliate against U.S. exports in the event the Manufacturing Clause was extended in any form. Further, on April 30, the British Secretary of State for Trade and Industry, in a statement during his visit to Washington, specifically addressed the provisions of S. 1822 (which is identical to HR 4696) when he reconfirmed the EC's intention to retaliate against U.S. products should the Clause be extended.

Kraft linerboard, the material for corrugated boxes and our industry's key export product to the EC, is on the top of the Community's retaliation list, which also includes tobacco and tobacco products, chemicals and machinery used in the printing, textile, paper and tobacco industries. The level of retaliation, as indicated by the EC, approaches $500 million per year and according to some government sources, could be even higher.

U.S. kraft linerboard exports to the EC exceeded $200 million in 1984 but slumped to $122 million in 1985 because of the impact of the high value of the U.S. dollar versus other currencies. EC retaliation at this time would have a most damaging impact on our industry which is just beginning to respond positively to the more favorable dollar exchange rate and regain some of our lost markets.

What is also of concern to the U.S. paper industry, is the possibility of retaliation by other GATT members. Furthermore, and equally important, if normally exported tonnage cannot find a foreign market, it would back up onto our domestic market resulting in adverse impact on jobs and investment.

The loss of kraft linerboard and possibly other paper industry exports would be a severe blow not only to the health of the U.S. paper industry, but also to the nation's effort in reducing the trade deficit through the expansion of U.S. exports. At a time when many

U.S. manufacturing industries are facing severe competition from foreign producers, the U.S. paper industry has worked hard to enhance its fundamental competitive strengths. The U.S. industry has invested billions of dollars to conserve and improve energy efficiency, has introduced new production technologies and has built modern world-class production facilities. Significantly, the high level of investment was maintained even during the last recession. Given these facts, and under normal exchange rate conditions, the U.S. paper industry would be in a position to expand exports.

While opposing extension of the "Manufacturing Clause", the U.S. paper industry is sensitive to the economic concerns of the U.S. printers and others supporting the Clause's extension. However, we feel that the solution to these concerns should not be another protectionist barrier, and in this particular case, not one that has already been found to be in violation of GATT rules. The printers have told us that their only reason for seeking extension of the Clause is their desire to surmount trade barriers that they face in other countries. API vigorously supports opening of the foreign markets to U.S. exports, in general, and for printed matter in particular. We also recognize that action is needed regarding the problem of pirating by other countries of material copyrighted in the United States. Thus, we fully support the printers in their market opening goals and copyright problems. We believe, though, that there are other tools available now that would be fully GATT-legal and, thus, would avoid retaliation against our and other industries' exports.

In addition to our concern over retaliation, extension of the "Manufacturing Clause" would undermine the U.S. position in the upcoming round of multilateral trade negotiations which the U.S. industry considers important in reducing foreign trade barriers to U.S. exports. The Administration's pursuit of Section 301 cases against countries violating U.S. intellectual property rights would also be significantly weakened if the Clause does not expire.

In conclusion, we urge opposition to passage of HR 4696.

WRITTEN

TESTIMONY ON

INTELLECTUAL PROPERTY RIGHTS AND THE MANUFACTURING CLAUSE

BY

RICHARD E. WILBOURN

CITIZENS FOR A SOUND ECONOMY

SUMMARY

Citizens for a Sound Economy (CSE) is a 250,000 member citizens group dedicated to expanding consumer choice and opportunity. With this goal in mind, CSE opposes extension of the manufacturing clause of the U.S. copyright laws. The manufacturing clause harms consumers, is protectionist, violates the General Agreement on Tariffs and Trade (GATT), and may very well reduce employment in the printing industry it is designed to protect.

From the consumer's standpoint, the manufacturing clause functions much like a tariff and creates economic inefficiency. It limits choice and raises book prices by an average of 12 percent according to the Institute for International Economics, costing U.S. consumers $500 million more per year for printed materials. It also distorts consumption and investment, resulting in a $29 million annual efficiency loss to the economy.

The United States has already been held in violation of the GATT because of the manufacturing clause. Its extension will severely undercut congressional attempts to eliminate unfair trade practices abroad and will be viewed as wholly inconsistent with this country's claims to leadership in the world copyright community.

Furthermore, the Department of State's Ad Hoc Working Group on U.S. Adherence to the Berne Convention has determined that the manufacturing clause is incompatible with U.S. efforts to abide by this international agreement. The strength of the Berne Convention agreement depends on the good faith and cooperation of those nations claiming to subscribe to its principles. Consequently, U.S. non-cooperation with this agreement denies authors the higher level of copyright protection afforded by the Berne Convention and results in significantly less secure U.S. intellectual property rights for printed materials.

The justification most often given for these bills is that they save American jobs. However, the Canadian exemption added to the Manufacturing Clause in 1978 resulted in no job losses within the American printing industry. Instead, Canada agreed to eliminate its duties on imported materials of a scientific or educational nature. On the other hand, a dramatic negative effect on American employment outside the printing industry would result if threatened retaliation by the European Economic Community (EEC) becomes reality. The EEC has announced that the manufacturing clause is costing it between $300 and $500 million in lost revenue opportunities, and it will retaliate if the clause is extended. Great Britain has announced its opposition to the clause in the House of Commons. Its estimates of damages are much higher than those of the EEC.

The manufacturing clause is a roadblock to gaining greater access to foreign markets. Its expiration will increase opportunities for American authors and illustrators and grant consumers a wider variety of less expensive printed products.

Citizens for a Sound Economy (CSE) is a 250,000 member citizens group dedicated to expanding consumer choice and opportunity. With this goal in mind, CSE opposes extension of the manufacturing clause of the U.S. copyright laws.

On June 30, the manufacturing clause of the copyright laws will expire. The manufacturing clause harms consumers, is protectionist, violates the General Agreement on Tariffs and Trade (GATT), and may very well reduce employment in the printing industry it is designed to protect.

The manufacturing clause requires resident American authors of non-dramatic literary material to print their works in Canada or the United States in order to retain copyright. Its practical effect is that most non-dramatic books, periodicals, newspapers, directories, instruction materials, manuals, and other commercial printings sold in the U.S. must be printed domestically.

From the consumer's standpoint, the manufacturing clause functions much like a tariff and creates economic inefficiency. It limits choice and raises book prices by an average of 12 percent according to the Institute for International Economics, costing U.S. consumers $500 million more per year for printed materials. It also distorts consumption and investment, resulting in a $29 million annual efficiency loss to the economy.

Not only does the reading public bear the burden of the manufacturing clause through higher prices, but American authors suffer since their works must compete against foreign authors whose works may be printed at the most cost-efficient locations around the world. In particular, new authors and illustrators are hurt because publishing untested works is made more risky. Many new works may never be published if the manufacturing clause is extended.

Consumers and authors find the manufacturing clause offensive, as do our allies and trading partners within the GATT. The United States has already been held in violation of the GATT because of the manufacturing clause. Its extension will severely undercut congressional attempts to eliminate unfair trade practices abroad and will be viewed as wholly inconsistent with this country's claims to leadership in the world copyright community.

Furthermore, the Department of State's Ad Hoc Working Group on U.S. Adherence to the Berne Convention has determined that the manufacturing clause is incompatible with U.S. efforts to abide by this international agreement. The strength of the Berne Convention agreement, which is the world's strictest international agreement protecting copyright property rights, depends on the good faith and cooperation of those nations claiming to subscribe to its principles. Consequently, U.S. non-cooperation with this agreement denies authors the higher level of copyright protection afforded by the Berne Convention and results in significantly less secure U.S. intellectual property rights for printed materials.

Yet despite these serious deficiencies in the manufacturing clause, Congressman Barney Frank and Senator Strom Thurmond are promoting the unlimited extension of the clause in two pending bills, HR 4696 and S 1822. While these bills are a compromise, this compromise does little to remove the protectionist inefficiencies of the manufacturing clause. The compromise extends the current manufacturing clause for two years and then establishes a tricky certification procedure based on a nation's intellectual property protection and labor rights records. Even without the two year extension included in the compromise, the policy of exempting certain countries from a provision that is GATT-illegal is a dangerous course to follow.

The justification most often given for these bills is that they supposedly save American jobs. However there is evidence which indicates a net job increase if the manufacturing clause is allowed to expire. For example, the Canadian exemption added to the Manufacturing Clause in 1978 resulted in no job losses within the American printing industry despite an absence of language or transportation barriers. Instead, Canada agreed to lower all its duties on imported materials of a scientific or educational nature from 10 percent to zero. American printers were able to increase their share of the Canadian print market while maintaining their percentage of the domestic market.

On the other hand, a dramatic negative effect on American employment outside the printing industry would result if the likely prospect of retaliation by the European Economic Community (EEC) becomes reality. The EEC has formally announced before the GATT that the manufacturing clause is costing it between $300 and $500 million in revenue opportunities, and it will retaliate if the clause is extended. The Thatcher government of Great Britain, which has officially sent members of Parliament to the United States to lobby U.S. congressmen against the manufacturing clause, has publicly announced its opposition to the clause in the House of Commons. Its estimates of damages caused by the manufacturing clause are much higher than those of the EEC. Great Britain has promised that it will encourage the European Community to retaliate against U.S. paper and tobacco products if the clause is not allowed to expire. Any of these retaliatory actions would upset employment in the printing, paper, and tobacco industries. Other retaliation and counterretaliation could affect U.S. agriculture, electronics, and consumer goods industries.

The copyrights of American authors and publishers should not be held hostage to protectionist trade politics. Our reading and consuming public, authors, publishers, manufacturers, and workers should not be forced to pay an unnecessary price to protect the special interests of a few. The manufacturing clause is a roadblock to gaining greater access to foreign markets. Its expiration will increase opportunities for American authors and illustrators and grant consumers a wider variety of less expensive printed products.

COALITION FOR THE EXPIRATION OF THE MANUFACTURING CLAUSE

311 FIRST STREET, N.W. - SUITE 500
WASHINGTON, D.C. 20001
(202) 737-8888

June 26, 1986

The Honorable Sam M. Gibbons
Chairman
Trade Subcommittee
Committee on Ways and Means
1111 Longworth House Office Building
Washington DC 20515

Dear Mr. Chairman:

We urge you to oppose S.1822/H.R.4696, legislation that would extend the Manufacturing Clause of the U.S. Copyright Law. The present clause prohibits imports of non-dramatic copyrighted works by American authors not printed or bound in the United States or Canada. It denies copyright protection to certain American authors whose works are printed beyond U.S. and Canadian boundaries.

Enactment of legislation to extend the Manufacturing Clause in any form -- even including so-called "compromise certification" formulas -- would severely set back efforts to protect U.S. intellectual property rights, efforts that are critical to preserve and enhance U.S. competitiveness. It would also result in retaliation against a broad range of U.S. exports.

The manufacturing clause impedes U.S. adherence to the Berne Copyright Convention and thus stands in the way of efforts to protect books, music, movies, computer software, and semiconductor chip design. It puts U.S. copyright owners at risk by weakening standards for intellectual property rights protection. It undermines U.S. credibility in efforts to make protection of intellectual property rights a top priority for multilateral trade negotiations that will begin in September.

The clause is undeniably protectionist. It raises consumer prices. It seeks to preserve a small number of jobs at the expense of workers in export industries.

The clause has been ruled a violation of U.S. international obligations by the GATT Council, thus clearing the way for retaliation against U.S. exports should Congress extend it. The European Community has notified the United States of its intent to retaliate by restricting imports of United States paper, tobacco, machinery for the paper, printing, tobacco, and textile industries, and chemicals in an amount between $300 million and $500 million. It would be wrong for Congress to take away the jobs of Americans in these exporting industries.

The United States is the world's leading exporter of printed products. Our printing industry is technologically sophisticated. It is a growth industry. Studies by the Congressional Research Service (1981), the U.S. International Trade Commission (1983) and the U.S. Department of Labor (1986) all conclude that job losses would be minimal, if there were any at all, should the clause be allowed to expire. Studies also show the industry's annual employment growth will exceed any job losses.

U.S. industries cannot compete successfully without better protection for their intellectual property rights. The U.S. economy cannot grow vigorously if Congress sacrifices the success of competitive exporters.

A vote against extending the Manufacturing Clause in any form is a vote for a more dynamic, more competitive U.S. economy. Please cast your vote against this ill-advised legislation.

American Association of Exporters & Importers
California Council for International Trade
Emergency Committee for American Trade (ECAT)
International Anticounterfeiting Coalition, Inc.
National Foreign Trade Council
U.S. Chamber of Commerce
U.S. Council for International Business
American Library Association
Association of American University Presses
Authors League of America, Inc.
McGraw-Hill, Inc.
Intellectual Property Committee
Intellectual Property Owners, Inc.
Citizens for a Sound Economy
Consumers for World Trade
American Film Marketing Association
CBS Inc.
Time, Inc.
Motion Picture Association of America, Inc. (MPAA)
Motion Picture Export Association of America, Inc.
Recording Industry Association of America
ADAPSO
American Electronics Association (AEA)
Computer and Business Equipment Manufacturers Association (CBEMA)
Computer and Communicatiions Industry Association (CCIA)
Electronic Industries Association (EIA)
Information Industry Association (IIA)
National Electrical Manufacturers Association (NEMA)
Semiconductor Industry Association (SIA)
Texas Computer Industry Council
AT&T
3M
Apple Computer
AST Research, Inc.
Burroughs Corporation
Honeywell, Inc.
IBM Corporation
Intel Corporation
NCR Corporation
Prime Computer
Texas Instruments Incorporated
Xerox Corporation
Leaf Tobacco Exporters Association
R. J. Reynolds Nabisco, Inc.
Tobacco Association of U.S.
American Paper Institute
MacMillan Bloedel, Inc.
National Forest Products Association
Pulp and Paper Machinery Manufacturers Association
Union Camp Corporation
Air Products & Chemicals, Inc.
Monsanto Co.
Pharmaceutical Manufacturers Association
Pfizer, Inc.
Weyerhaeuser Company

STATEMENT ON THE EXPIRATION OF THE MANUFACTURING

CLAUSE OF THE COPYRIGHT ACT

Doreen L. Brown, President
Consumers for World Trade

Consumers for World Trade (CWT) believes that the Manufacturing Clause of the Copyright Act, section 601 of Title 17, United States Code, should be allowed to expire on June 30, 1986, and should neither be expanded nor brought back in any form.

The Manufacturing Clause confers special protection on United States book manufacturers at an unjustifiable cost to consumers. In a 1986 study by the Institute for International Economics, the authors conclude that the cost to consumers of maintaining the Manufacturing Clause in 1984 came to $500 million overall; $100,000 was spent for every production job saved. On the other hand, the gain to producers from the trade restraint imposed by the Clause was $305 million or $9,000 for every worker employed in the book manufacturing industry. The net effect represents an off-budget transfer from consumer to producer and makes little economic sense. Consumers are presently paying over $55 billion annually for all trade limiting measures.

Continuation of the Manufacturing Clause as proposed in H.R. 4696 would carry the added disadvantage of provoking retaliation against U.S. paper, tobacco and printing industries by the European Community in an amount estimated at between $300 and $500 million, adding to the burden already borne by the consumer and endangering U.S. exports markets.

Furthermore, continuing the Manufacturing Clause would undercut the United States' own agenda for inclusion of intellectual property rights in a new GATT round, and for strengthening the GATT dispute settlement mechanism. A GATT panel ruled on behalf of the European Community's objection against the Manufacturing Clause in 1984. The Europeans have refrained from taking action pending the mandated expiration date of the Clause. Our negotiating posture on behalf of a strengthened multilateral trading system will be severely undermined if we are seen to violate GATT procedures and rulings on the one hand while demanding that they be strengthened on the other.

H.R. 4696 requires that a determination be unilaterally made by the USTR that countries meeting certain criteria could be certified exempt from the Clause. This tactic also weakens attempts to shore up the multilateral system. It is this system which, if allowed to operate, will continue to maintain affordable consumer prices in America.

On June 6 the Canadians imposed a tariff on selected U.S. products in retaliation for the U.S. decision to place a 35 percent tariff on Canadian cedar shakes and shingles. Among the products chosen are certain U.S. books and periodicals which had been coming into Canada tariff-free. Now a 10 percent tariff will apply to printed music, some maps, charts and pamphlets and novels not used as classroom textbooks.

In a statement May 22 before the House Judiciary Subcommittee on Courts, the Printing Industries of America, Inc. state that "there has been only one significant improvement in our ability to trade goods with other countries. That improvement is the zero rating of the tariff on books and periodicals into Canada. That was accomplished by the U.S. and Canadian printing industry by virtue of negotiation over the Manufacturing Clause." The industry further goes on to say that it is tired of being part of a "global swap system" where concessions are not made on a tit for tat, sectoral basis.

Cross-sectoral retaliation, however, is the unintended and unfortunate consequence of the unilateral imposition of trade restrictive measures of which the Manufacturing Clause is a classic example.

Consumers for World Trade urges the House Ways and Means Trade Subcommittee to oppose H.R. 4696. The threat to invoke the Manufacturing Clause as envisioned by the proposed legislation is like a double edged sword: it is a threat against America's trading partners, and it is equally a threat to America's consumers.

HBJ

HARCOURT BRACE JOVANOVICH, INC.

1666 CONNECTICUT AVENUE, N.W., WASHINGTON, D.C. 20009 TELEPHONE: 202-387-3900

MARSHA CAROW
VICE PRESIDENT

June 19, 1986

COMMITTEE ON
JUN 25 1986
WAYS AND MEANS

The Honorable
Dan Rostenkowski
U.S. House of Representatives
Committee on Ways and Means
2111 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Rostenkowski:

Harcourt Brace Jovanovich, Inc., a Fortune 500 publisher, urges your support to allow the Manufacturing Clause to expire permanently. A vote for expiration is a vote against an unnecessary, anachronistic, inappropriate, and protectionist provision of the Copyright Act.

The Manufacturing Clause is unnecessary. The U.S. printing industry is healthy and internationally competitive.

The Manufacturing Clause is anachronistic. First enacted to protect a fledgling industry many years ago, that industry has been strong and mature for decades.

The Manufacturing Clause is inappropriate. It is unfair to jeopardize an American author's copyright allegedly to protect an industry which does not need protection.

The Manufacturing Clause is protectionist. The EC has announced it will retaliate against a variety of U.S. industries. Canada already has retaliated against U.S. books and periodicals. The Manufacturing Clause is GATT-illegal and incompatible with the Berne Convention.

The administration has testified the Manufacturing Clause will seriously hamper its important efforts to combat international piracy and to gain appropriate protection for U.S. intellectual property abroad.

Harcourt Brace Jovanovich believes the Manufacturing Clause no longer serves a useful purpose and its continuation will cause real harm to American industry.

We urge your support for expiration of the Manufacturing Clause.

Thank you for your consideration of this matter.

Sincerely yours,

Marsha S. Carow

Harcourt Brace Jovanovich, Inc. Supports Expiration of the Manufacturing Clause as Scheduled on June 30, 1986

The Manufacturing Clause is harmful to United States efforts to strengthen respect for intellectual property in the international community and to combat piracy.

- The Manufacturing Clause violates our obligations under GATT which seriously undercuts U.S. efforts to place protection of intellectual property on the GATT agenda. Such protection is a high priority in our efforts to preserve our competitiveness, particularly in the important areas of high technology.

- The Manufacturing Clause is a hindrance to U.S. adherence to the Berne Convention, the premier international copyright treaty. Adherence to the Berne Convention is a goal of the broad-based copyright community which embraces such industries as movies, records, music and software.

- The Manufacturing Clause jeopardizes our efforts to get developing countries - particularly along the Pacific Rim - to modernize their copyright laws. These countries use the Clause as justification for their own protectionist statutes and are often the sites of serious commercial piracy of copyrighted material.

The Manufacturing Clause could cause harm to other industries and is not necessary to protect the printing industries which are healthy and competitive.

- The European Community has announced that if the Clause is retained, it will retaliate against a wide variety of United States industries including paper, tobacco, chemicals and machinery for making tobacco products, chemicals, textiles and paper. Exports from these industries to the Economic Community alone came to almost $4 billion in 1985.

- The printing industry has access to a wide variety of trade remedies under the Trade Act.

- A number of studies in recent years, including those from the U.S. International Trade Commission, the Congressional Research Service, and the Department of Labor, have all concluded there would be minimal impact on domestic printing industries if the Clause were allowed to expire.

The Manufacturing Clause "protects" printers while discriminating against American authors.

- It is an unfair burden on American authors to jeopardize their Constitutional copyright by imposing domestic manufacturing requirements on the full exercise of that right.

The Manufacturing Clause is clearly a piece of trade legislation which has no place in our copyright law, and as trade legislation it is both unnecessary and actually harmful, not only to authors and publishers, but to many domestic industries.

STATEMENT OF THE UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

The United States Council for International Business is opposed to H.R. 4696, legislation that would extend the Manufacturing Clause of the 1976 Copyright Act. The Manufacturing Clause requires that all English-language, non-dramatic, literary works by authors living in the United States, be printed in the United States or Canada in order to qualify for the full range of copyright infringement remedies.

The United States Council opposes the extension of the Clause in any form for two major reasons:

- The Manufacturing Clause is a major barrier to U.S. adherence to the Berne Convention for the Protection of Copyright;
- The Manufacturing Clause has been found to be in violation of the GATT and its extension could lead to retaliatory measures by our trading partners.

A major barrier to U.S. adherence to the Berne Convention

In its policy statements over the past year, the United States Council has called for increased efforts to supplement and reinforce the existing international conventions that play a critical role in providing a base of international protection for intellectual property. A major recommendation of the Council has been that the U.S., as a step in showing its determination to uphold high standards for intellectual property protection in world trade, should adhere to the Berne Convention for the Protection of Copyright.

American creativity has always shaped the products and services that enable us to trade with other countries. To an ever-increasing extent, the prosperity of the American economy and our competitiveness in international trade has come to depend upon industries where the expression of an idea is the principal component of the product or service. This kind of intellectual creation--ideas, information, programs, images, sound--is expressed in a widening array of products protected by copyright. Without the protection of internationally-accepted copyright rules, U.S. industries cannot effectively compete in world markets, cannot fund the investment necessary to continue to innovate, and cannot continue to lead the information revolution.

The Berne Convention for the protection of copyright, to which the United States is not yet signatory, provides the highest standards of protection presently available internationally. The Berne Convention represents the best hope of elaborating and establishing adequate and effective standards of copyright protection to govern present and future international trade.

In Violation of the GATT

As a quantitative restriction on imports, the Manufacturing Clause violates U.S. obligations under the GATT. In 1954, the U.S. notified the GATT that the Manufacturing Clause was excepted from our GATT obligations as "existing legislation." As a result of the extension of the Clause in 1982, and a complaint by the European Communities in this regard, the GATT Council concluded that the 1982 extension did not qualify as "existing legislation" and was inconsistent with U.S. obligations. At that time, the E.C. claimed that is was entitled to $250 million in compensation for the 1982-1986 extension.

A further extension or expansion of the Clause not only would show a continued disregard for U.S. trade obligations, but also invite retaliation. This kind of action would be particularly unfortunate at a time when the U.S. is pressing for a new round of multilateral trade negotiations aimed at strengthening the GATT and its dispute settlement process, and the introduction of intellectual property issues, including copyright, into its agenda.

The United States Council has been at the forefront of efforts to strengthen the GATT in order to advance the open trading system, and improve intellectual property protection. Extending the Manufacturing Clause would signal to the world that the U.S. is unwilling to accept the present obligations of the Berne Convention, which we urge others to join and propose to join ourselves, and that we are unwilling to fulfill our present obligations under the GATT even as we seek to bring intellectual property issues into GATT as a means of securing extended and more dependable international copyright protection.

In sum, though H.R. 4696 seeks to ensure protection of U.S. material printed abroad, it does so by extending existing protectionist legislation that contravenes U.S. trade obligations. The same goal of securing protection for U.S. works is currently being pursued through existing U.S. trade legislation, bilateral efforts, and through the GATT. These comprehensive efforts could be undermined were the Manufacturing Clause to be extended.

The United States Council for International Business is a membership organization that represents American business interests on international economic policy issues to the major international economic institutions, and to the executive and legislative branches of the U.S. Government. Its primary objective is to promote an open system of world trade, finance, and investment.

U.S. Council for an Open World Economy

INCORPORATED

7216 Stafford Road, Alexandria, Virginia 22307

(703) 765-2472

Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Subcommittee on Trade (House Committee on Ways and Means) in a hearing on H.R. 4696, a bill to extend and amend the manufacturing clause of the copyright law

June 26, 1986

(The U.S. Council for an Open World Economy is a private, nonprofit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

Extension of the manufacturing clause of the copyright law beyond its current expiration date of June 30, 1986 would not be in the national interest. The proposal in H.R. 4696 to extend this provision indefinitely -- subject to exemptions after July 1, 1988 for countries that virtually remove import barriers on U.S. printed matter, protect the intellectual-property rights of U.S. nationals, and protect internationally recognized worker rights -- does not adequately address the realities of the international dispute surrounding this import restriction. Contrary to the claims of proponents, provision for such exemptions will not, in practice, make the redesigned manufacturing clause an instrument for free trade. Other, more productive routes need to be found for securing equity, at home and abroad, for U.S. producing, trading and property interests affected by U.S. policy in this field.

Enacted in 1891 and liberalized several times over the past 95 years, the manufacturing clause requires that, as a condition for U.S. copyright protection, preponderantly nondramatic literary works in the English language (with certain exceptions) by a U.S. author (or a foreign author domiciled in the United States) must be printed and bound in the United States or Canada. We understand that books are the only printed matter for which the manufacturing clause has much significance. Jobs likely to be protected by retention of the manufacturing clause (the estimates are the subject of some controversy) are far exceeded by the number of U.S. jobs that would be at risk if foreign governments retaliated against U.S. exports for U.S. failure to terminate this trade restriction.

The manufacturing clause is more than a barrier to commerce. As a simplistic response to fears of foreign competition, it tends to divert attention from -- and is thus a barrier to -- coherent, incisive action addressing the real problems and needs of the U.S. industry for whose benefit this aged, jaded protectionism has been kept on the statute books. It is a barrier to U.S. authors unable to make suitable arrangements for the printing of their U.S.-copyrighted works in the United States or Canada and not wanting to lose copyright protection by getting these works manufactured elsewhere. It is also a barrier to U.S. publishers seeking maximum flexibility for optimum efficiency and effectiveness in the world market. Barriers that impede authors and publishers serve ultimately to disadvantage consumers of the printed word and in some measure retard cultural and educational advancement.

Whether or not justifiable as economic policy, import restriction for the printing industry does not belong in the copyright law. No similar condition concerning U.S. manufacture is attached to U.S. patent law. To the extent that trade-restrictive protection against foreign competition has economic justification, it should be only a marginal, transitional component of a coherent, comprehensive, constructive industry-adjustment strategy based on a careful diagnosis of the problems and needs of an industry that requires and deserves government help. Import-restrictive assistance of any kind should be the subject of a proceeding under the import-relief provisions of the trade legislation.

Neither approach has ever been followed with respect to the U.S. printing industry. It is not clear that the industry's current state of development owes much if anything to the existence of the manufacturing clause for so many years. The industry's future health surely depends on much more than such an anachronism, whose overall costs certainly outweigh any benefits.

Objection to repeal of the manufacturing clause on grounds of substantially lower wages outside the United States and Canada reveals the narrowest perception of international competitive advantages and disadvantages. It overlooks the vital factor of preeminent U.S. productivity in book manufacturing and other printing enterprises, and many other factors affecting international competition, such as U.S. cost advantages in paper supply and in proximity to the quickly changing U.S. market. The Copyright Office points out that American publishers, in choosing manufacturers for works exempt from the manufacturing clause, frequently select domestic printers and binders.

Follow-Up Measures

To be for termination of the manufacturing clause is not the alpha and omega of our Council's concern with this issue. We are also concerned with the health of the U.S. printing industry and with the job opportunities of the people who currently depend on it directly or indirectly. Also of concern is the thicket of trade barriers impeding the entry of U.S. publications and other printed matter into many foreign countries. Some of these countries are among the most vocal in their opposition to the manufacturing clause, and some have withheld participation in some of the international agreements dealing with educational and cultural materials. Besides the cost of foreign retaliation if the manufacturing clause is not terminated, we are also concerned with the effect of continuing the manufacturing clause on U.S. efforts to gain the widest adherence to international agreements dealing with copyright and other intellectual-property matters.

We urge that, in anticipation of termination of the manufacturing clause, the Administration should discuss with the U.S. printing industry and related unions the adjustment problems that might be encountered and the most effective ways to solve them, consistent with the national interest. Congress should require the Administration to report annually, for several years following repeal, on the progress made in these adjustment efforts and on legislative measures that might be necessary to facilitate such efforts. The Administration should also be required to report to Congress annually on progress made toward (a) removal of barriers impeding entry of U.S. printed matter to foreign countries, and (b) gaining adequate protection for U.S. copyright and other intellectual-property rights around the world.

Because of the legislative history of the manufacturing clause in the past decade and the decisions reached on this issue in the General Agreement of Tariffs and Trade, termination of the manufacturing clause at this time would be preferable to proposals to extend it (with or without amplification) subject to exemptions (beginning July 1, 1988) reciprocating concessions by foreign countries concerning import barriers, intellectual-property rights and internationally recognized labor standards. Adapting the manufacturing clause to such concessions and conditions might have had some merit under other circumstances. But actions and expectations in recent years concerning this issue have set the stage for terminating this provision of the copyright law and resorting to other measures (in domestic and foreign policy) to ensure equity for U.S. interests, both domestic and international. For example, a U.S. free-trade agreement with Canada should not be approved unless inter alia it includes programming the complete removal of all barriers encountered by U.S. publications and other printed matter in Canada.

Conclusion

The United States has the unenviable distinction of being the only significant book-publishing and book-manufacturing country (at least in the Free World) that controls its commerce in books and other printed matter by restricting the freedom of certain categories of copyright owners to decide where their works are to be published. Other countries do highly objectionable things affecting international trade in these and other products, and are capable of doing worse. They should be encouraged to do better, not given excuses to retain old barriers or add new ones. U.S. retention of the manufacturing clause would send the wrong signal from the world's most advanced economy and, we would like to feel, the most enlightened. Even where direct retaliation does not result, emulation harmful to U.S. interests in book publishing and other fields is a real possibility, as is increased resistance to U.S. initiatives aimed at freer international trade. Among other drawbacks, the manufacturing clause sets a poor example on how to deal with problems which industries may encounter in international competition.